No. 11809

United States
Circuit Court of Appeals
For the Ninth Circuit.

MISSION CORPORATION, a corporation,

Appellant,

vs.

WILLIAM G. SKELLY,

vols. 3 + 4 of Trans bnd separately

Appellee.

Transcript of Record
IN FOUR VOLUMES
VOLUME I
Pages 1 to 258

Upon Appeal from the District Court of the United States for the District of Nevada

Rotary Colorprint, 870 Brannan Street, San Francisco 3-12-48—70

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Mission Corporation: Special Meeting of Stockholders December 6, 1947; Notice of Meeting and Proxy Statement.

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*Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court
for the District of Nevada

No. 669 Civil

WILLIAM G. SKELLY,

Plaintiff,

vs.

MISSION CORPORATION, a Corporation,

Defendant.

ORDER FIXING TIME FOR HEARING APPLICATION FOR TEMPORARY INJUNCTION

Upon the verified complaint of plaintiff heretofore filed herein, and upon motion of the plaintiff,

It Is Ordered, Adjudged and Decreed that the application of plaintiff for temporary injunction in the complaint of plaintiff prayed for be, and the same hereby is, set for hearing before the District Court of the United States in the Courtroom of said Court in the City of Carson, in the State of Nevada, on the 21st day of November, 1947, at 10 o'clock a.m., on that day, or as soon thereafter as counsel can be heard.

It Is Further Ordered, Adjudged and Decreed that the defendant herein show cause, if any it has, before said Court at said time and place, why said temporary injunction should not issue as prayed for in said complaint herein, and that the defendant also show cause at the same time and place why

plaintiff should not have such other and further relief in the premises as may be just and proper.

It Is Further Ordered that, sufficient cause having been shown, a copy of this order may be attached to the summons herein and this order served by serving said copy with said summons.

Dated this 4th day of November, 1947.

/s/ ROGER T. FOLEY,
United States District Judge.

[Endorsed]: Filed Nov. 4, 1947. [25]

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes Now the defendant above named, Mission Corporation, by its undersigned attorneys in the above-entitled action, and separately moves the Court to dismiss the above-entitled action, upon the following several grounds:

1. That this Court has no jurisdiction of the subject matter of the action, in that it does not appear that the amount in controversy is in excess of the jurisdictional amount of Three Thousand Dollars ($3,000), exclusive of interest and costs, and in this connection defendant denies that such jurisdictional amount is involved.

2. That the complaint fails to state a claim upon which relief can be granted.

Said motions and each of them will be made upon the files and papers in said cause, and upon the points and authorities attached hereto.

Dated at Reno, Nevada, this 10th day of November, 1947.

/s/ LESTER D. SUMMERFIELD,
/s/ ROBERT ZIEMER HAWKINS,
/s/ BRYCE RHODES,
Attorneys for Defendant.

NOTICE OF MOTION

To Thatcher, Woodburn & Forman, William Woodburn, William J. Forman, John P. Thatcher and William K. Woodburn, Attorneys for Plaintiff:

Please Take Notice, that the undersigned will bring the above motion on for hearing before this Court in Carson City, Nevada, on Wednesday, November 12, 1947, at 10 o'clock a.m. of that day, or as soon thereafter as counsel can be heard.

LESTER D. SUMMERFIELD,
ROBERT ZIEMER HAWKINS,
BRYCE RHODES,
Attorneys for Defendant.

ORDER SHORTENING TIME

Upon application of counsel for defendant in the above-entitled action, and good cause appearing therefor, It Is Hereby Ordered that the foregoing

Motion be set and heard before the above-entitled Court at Carson City, Nevada, on Wednesday, November 12, 1947, at 10 o'clock a.m.

ROGER T. FOLEY,
United States District Judge.

MEMORANDUM OF AUTHORITIES

Court Without Jurisdiction:

Kvos vs. Associated Press, 81 Law Ed. 183, 299 U. S. 269 (1936);

Paul V. McNutt vs. General Motors, 80 Law Ed. 1135, 298 U. S. 178;

Paul V. McNutt vs. McHenry Chevrolet Co., 80 Law Ed. 1141, 298 U. S. 190;

Clark vs. Paul Gray, 83 Law Ed. 1001, at 1007, 306 U. S. 583;

N. C. L. 1929 Sec. 1640 (as amended statutes of Nevada 1937 at page 17).

Complaint Fails to State a Claim for Relief:

Beechwood Securities Corporation vs. Associated Oil Company C. C. A. 9th Circuit, 104 Fed. (2) 537;

Hubbard vs. Jones & Laughlin Steel Corporation (Pennsylvania District Court), 42 Fed. Supp. 432, at 435;

Adams vs. United States Distributing Corporation, 34 S. E. (2) 244, at 248-249, 28 U. S. C. A. Sec. 384;

Rieder vs. Rogan, 20 Fed. Supp. 307;

Colby vs. Equitable Trust Company of New York, et al., 124 App. Div. 262, 108 N. Y. S. 978 (February 14, 1908.)

(The Following Appears on Page Four of the Original Motion):

Service of the within and foregoing Motion to Dismiss, by copy, admitted this 10th day of November, 1947.

/s/ JOHN P. THATCHER,
Of Counsel for Plaintiff.

[Endorsed]: Filed Nov. 10, 1947. [57]

[Title of District Court and Cause.]

AMENDED COMPLAINT

For cause of action against defendant, plaintiff alleges:

I.

Plaintiff William G. Skelly is a citizen and resident of the State of Oklahoma.

II.

Defendant Mission Corporation is a corporation organized and existing under and by virtue of the laws of the State of Nevada.

III.

The matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000.00).

IV.

At and before the date of the transactions hereinafter set out, plaintiff was, continuously since has been, and now is, [58] the owner and holder of fourteen thousand (14,000) shares of the common capital stock of defendant, of which two thousand (2,000) shares are of record in his name on the books of the defendant and twelve thousand (12,000) shares are beneficially owned by him. That at the date of this action the said fourteen thousand (14,000) shares had a market value of the sum of Seven Hundred and Seven Thousand Dollars ($707,000.00). Plaintiff brings this action to preserve and protect from threatened and pending irreparable injury (1) all of the property and assets of defendant, which have a market value in the sum of Ninety-one million, five hundred five thousand five hundred twenty-five dollars ($91,505,525.00) and a par value of Ten Dollars ($10.00) per share; (2) the stock and investment of plaintiff in defendant corporation; and (3) the stock and investment of all other stockholders of defendant corporation other than Pacific Western Oil Corporation. This action is brought on behalf of plaintiff himself and all other stockholders of defendant corporation, other than Pacific Western Oil Corporation, who are similarly situated and

jointly interested with plaintiff in the protection of their own investment and preservation of the assets of defendant corporation. That unless enjoined defendant will wrongfully and illegally cause said alleged merger agreement to be approved and carried out and the assets of defendant transferred to Sunray Oil Corporation in exchange for shares of said Sunray Oil Corporation to the irreparable injury and damage of defendant corporation and to the investment of stockholders therein other than Pacific Western Oil Corporation. That the injury and damage to the plaintiff herein and to the defendant corporation and the value of the object sought by this action far exceeds the sum or value of Three Thousand Dollars ($3,000.00). That plaintiff on October 18, 1947, entered his objections of record to the alleged merger agreement, [59] and as a director of defendant endeavored, unsuccessfully, to dissuade the majority directors of defendant from wrongfully approving and proceeding to carry out the alleged merger. That further demand upon the directors or officers of defendant corporation to prevent said merger is, as the facts hereinafter alleged show, wholly useless and futile. This action is not a collusive one to confer on a court of the United States jurisdiction of an action of which it would not otherwise have jurisdiction.

V.

Thomas A. J. Dockweiler and George Franklin Getty II are Trustees under that certain Declaration of Trust dated December 31, 1934, wherein

Sarah C. Getty is named as trustor and J. Paul Getty as original trustee; J. Paul Getty is testamentary trustee under the Decree of Partial Distribution of the Estate of Sarah C. Getty, deceased. Said trustees and J. Paul Getty individually are hereinafter referred to as the Getty Interests.

VI.

The Getty Interests are and at all times hereinafter alleged have been the owners and holders of not less than one million, one hundred sixty-nine thousand, four hundred forty-nine (1,169,449) shares of Pacific Western Oil Corporation, a Delaware corporation, which has issued and outstanding a total of one million, three hundred seventy-one thousand, seven hundred thirty (1,371,730) shares of common capital stock. By virtue of such stock ownership, the Getty Interests have and exercise actual control of Pacific Western Oil Corporation.

VII.

Pacific Western Oil Corporation is and at all times hereinafter alleged has been the owner and holder of not less than six hundred forty-one thousand, eight hundred eight (641,808) shares of defendant, which has issued and outstanding [60] a total of one million, three hundred seventy-four thousand, one hundred forty-five (1,374,145) shares of capital stock. The remaining shares of the capital stock of defendant are owned by more than thirty thousand (30,000) different shareholders other than Pacific Western Oil Corporation. By

virtue of its ownership of stock and proxies obtained from other shareholders by defendant's management, Pacific Western Oil Corporation has for many years last past and now exercises actual control of defendant.

VIII.

The Getty Interests decided to obtain cash for their stock in Pacific Western Oil Corporation and their control of Pacific Western and the defendant herein, and on or about the 4th day of October, 1947, entered into a written agreement with Sunray Oil Corporation, a Delaware corporation, for the sale thereof upon certain terms and conditions, a copy of which is attached hereto as "Exhibit A" and made a part hereof. On said date the book value of Pacific Western Oil Corporation stock was approximately twenty-one dollars ($21.00) per share and its market value (said stock is listed on the N. Y. Stock Exchange) was Fifty-two Dollars ($52.00) per share. Under "Exhibit A" attached hereto, the cash price to be paid by Sunray to the Getty Interests is Sixty-eight Dollars ($68.00) per share, or a total of Seventy-nine Million, Five Hundred Twenty-two Thousand, Five Hundred Thirty-two Dollars ($79,522,532.00), but on said date the book value of said stock was approximately Twenty-four Million, Five Hundred Fifty-eight Thousand, Four Hundred Twenty-nine Dollars ($24,558,429.00) and its market value was only Sixty Million, Eight Hundred Eleven Thousand, Three Hundred Forty-eight [61] Dollars ($60,811,348.00). "Exhibit A"

provides that sale is to be made and the purchase money paid immediately prior to a merger of Sunray Oil Corporation, Pacific Western Oil Corporation, Mission Corporation and Skelly Oil Company (of the capital stock of which Mission owns approximately fifty-nine per cent (59%), becoming effective. However, Skelly Oil Company did not become a party to the merger plan, and it went forward as a plan to merge the other three corporations.

IX.

An agreement to merge Pacific Western Oil Corporation and defendant into Sunray Oil Corporation was prepared, as plaintiff is informed and believes and therefore alleges the fact to be, by Sunray Oil Corporation and Eastman, Dillon & Company (an investment banking firm with offices in New York City), and the Getty Interests. A copy of said agreement is hereto attached, marked "Exhibit B" and made a part hereof. Said agreement does not include or mention any of the terms or provisions of the contract between the Getty Interests and Sunray Oil Corporation, "Exhibit A" hereto, but is conditioned on Sunray acquiring and becoming the owner of the Pacific Western stock covered by "Exhibit A" prior to or simultaneously with the effective date of the merger.

X.

On October 18, 1947, at a special meeting, defendant's Board of Directors by a majority vote, directors Skelly and Hyden voting "No," approved

said merger agreement, "Exhibit B" hereto, and ordered the calling of a special meeting of defendant's stockholders, to be held on the 6th day of December, 1947, at ten o'clock a.m., at the principal office of defendant, No. 153 North Virginia Street, Reno, Nevada, to consider and vote [62] upon the adoption of said merger agreement. That at said meeting, unless the holding thereof be prevented by this Court, the Getty Interests, through their control of defendant as aforesaid, will cause said agreement to be adopted and carried out. The agreement has been executed by a majority of defendant's directors.

XI.

Defendant owns one million, three hundred forty-five thousand, five hundred ninety-three (1,345,-593) shares of the capital stock of Tide Water Associated Oil Company. Plaintiff is informed and believes, and therefore alleges the fact to be, that on the effective date of the Agreement of Merger said stock is to be sold by Sunray to Tide Water Associated Oil Company at a price of Twenty-five Dollars ($25.00) per share, or a total price of Thirty-three Million, Six Hundred Thirty-nine Thousand, Eight Hundred Twenty-five Dollars ($33,639,825.00). That said Tide Water Associated Oil Company stock owned by defendant corporation was, at the date of this action, of the market value of the sum of Thirty-one Million, Four Hundred Fifty-three Thousand, Two Hundred Thirty-six Dollars and Seventeen Cents ($31,453,236.17). Said

sale will also include five hundred seventy-seven thousand, eight hundred fifty-four ($577,854) shares of Tide Water stock owned by Pacific Western Oil Corporation. The proceeds of said sale are to be applied on payment for Pacific Western Oil Corporation stock to be purchased as aforesaid. Plaintiff does not have a copy of the agreement for the sale of said Tide Water stock. Neither its existence nor the intention to make said sale is disclosed by, nor are its terms included in, said merger agreement, "Exhibit B" hereto. [63]

XII.

At said Directors' meeting of October 18, 1947, and prior to a consideration by said Board of the proposed merger agreement, plaintiff was removed as President of defendant and David T. Staples was elected in his stead. Prior to said meeting, the Getty Interests, acting through Fero Williams, suggested to Arch Hyden that he resign as one of Defendant's directors, but he refused so to do. Immediately prior to said meeting, B. I. Graves resigned as a director and at said meeting David T. Staples was elected to succeed him.

The action of defendant's Board of Directors on October 18, 1947, in voting in favor of and the signing of the said merger agreement by a majority of the Board of Directors were and are nullities because effected and done by the vote of defendant's directors, David T. Staples, Fero Williams, Emil Kluth and Arthur M. Boal. Of these, Staples is President of defendant and the President and

a director of Pacific Western Oil Corporation; Williams is a director and Assistant Secretary and Treasurer of Pacific Western Oil Corporation, and Kluth is Vice-President of Pacific Western Oil Corporation. All of them and Thomas A. J. Dockweiler, a director of defendant, were elected to their positions by Pacific Western Oil Corporation at the instance and direction of the Getty Interests. Thomas A. J. Dockweiler did not vote. There is a direct conflict of interest between the stockholders of this defendant in making any merger agreement, including "Exhibit B" hereto, and there is a direct conflict of interest between the Getty Interests and all stockholders of defendant other than Pacific Western Oil Corporation by virtue of "Exhibit A" hereto. The said Staples, Dockweiler, Williams, Kluth and Boal represent the [64] Getty Interests and were and are disqualified from representing defendant and its stockholders other than Pacific Western in each and all of the matters and transactions hereinbefore set out.

XIII.

Prior to the 18th day of October, 1947, there had not been presented to defendant's Board of Directors any matter pertaining to the merger of said three companies, nor had any negotiations concerning it been conducted with W. G. Skelly, defendant's then President and chief executive officer. At said meeting there was presented to the Board "Exhibit B" hereto in final form. The

Board of Directors, acting by and through the directors controlled by and representing the Getty interests as aforesaid, did not have and refused to procure an appraisal of the value of the assets of the corporations proposed to be merged, any information as to whether or not the books of the several companies were kept on the same or comparable bases, or other essential facts or to delay the matter for forty-eight (48) hours to procure the considered opinion of counsel. At said meeting two resolutions, copies of which are attached as "Exhibits C and D" and made a part hereof, were proposed by W. G. Skelly, seconded by Arch Hyden, and rejected by a majority of the Board which represented the Getty Interests. Plaintiff alleges that the action of said Board in approving said merger agreement, "Exhibit B" and calling said stockholders' meeting was summary and arbitrary and was and is a nullity. Plaintiff is informed and believes, and therefore alleges the fact to be, that for tax reasons the Getty Interests demand that the sale of their stock be closed and the money paid them before the end of the year 1947, which [65] cannot be done if time is taken to consider and investigate the proposed merger and determine the relative values of the assets of the constituent corporations.

XIV.

That said purported merger agreement was and is in reckless disregard of the rights of all stock-

holders of defendant other than Pacific Western Oil Corporation, and is so grossly unfair to them as to be fraudulent. That in particular:

(a) The Getty Interests have exercised and will exercise their control of Mission and the Mission Board of Directors to effect the merger, the terms of which provide for substantially better treatment for the Getty Interests than stockholders of Mission other than Pacific Western (hereinafter called "the remaining stockholders"). Furthermore, the statutory rights available to dissenting stockholders of Mission are not adequate for the protection of such remaining stockholders.

(b) The conversion ratio of six shares of the common stock of the surviving corporation, of the par value of $1.00 per share, for one share of Mission is substantially less favorable to the remaining stockholders than the consideration provided for the Pacific Western Stockholders by the Getty Interests.

The Pacific Western minority stockholders have the alternative, under "Exhibit A," of taking $68.00 in cash or slightly more than the equivalent thereof in prior cumulative preferred stock of the surviving corporation, whereas the remaining stockholders of Mission must either accept the common [66] stock of the surviving corporation at the ratio negotiated for them by the Getty Interests or assert their rights as dissenters. If they accept the common stock of the surviving corporation, their interest in such corporation will be subject

to debt and senior securities in excess of $100,000,000.00. If they elect to convert their new stock in such corporation to cash, they must take the risk of fluctuations in the market price and compete with one another in the market, and bear the cost of such liquidation, with the result that the net cash realized on their investment may be considerably less than the apparent value of six shares of the surviving corporation at current market price, whereas the Getty Interests have secured themselves against any such risk of losses and cost by arranging in advance to receive an amount certain on a particular date without any expense of liquidation or risk of diminution of the value fixed by them for their investment. The statutory rights available to dissenters do not afford them treatment equal to that which the Getty Interests have negotiated for themselves. The Getty Interests have arranged whereby their gains on this transaction shall be subject to 1947 tax laws whose provisions are certain, whereas the remaining Mission stockholders, especially dissenters, must subject themselves to 1948 tax laws which may be substantially adverse to the interests of such stockholders. Furthermore, because of the [67] price the Getty Interests have negotiated for their Pacific Western stock and the heavy strain which payment thereof will place on the credit of the surviving corporation, the remaining Mission stockholders, dissenters and non-dissenters alike, must run the risk that the claims of dissenters may be so substantial as to render insolvent the surviving cor-

poration and so render it impossible for dissenting shareholders to secure prompt payment of the fair cash value of their shares.

(c) That the sale of defendant's stock in Tide Water Associated Oil Corporation is a part of said merger plan, although not stated therein, and constitutes a partial liquidation of defendant for the sole benefit of Pacific Western Oil Corporation and its stockholders, and further is the wrongful appropriation by Pacific Western Oil Corporation and its shareholders of a business opportunity which belongs to defendant.

(d) There has been no common yardstick appraisal of the value of the assets of the constituent companies and by majority vote of defendant's Board of Directors none is to be made.

(e) The only class of stock issued by defendant and outstanding is common stock and aside from current operating expenses, which are insignificant in amount, there are no debts, bonds, or prior capital of any nature issued by or outstanding against the defendant so that the [68] said common stock represents a first and prior claim against all of its assets. The common stock of defendant represents a sound, conservative investment. The common stock of the surviving corporation to be issued in exchange for the said stock of defendant will be highly speculative in character. At the effective date of the merger agreement, a cash expenditure by Sunray of between Seventy-nine Million, Five Hundred Thousand Dollars ($79,-500,000.00) and Ninety-three Million Dollars ($93,-

000,000.00) will be required for purchase of Pacific Western Oil Corporation stock, and additional cash in the amount of Twenty-nine Million, Seven Hundred Fifty Thousand Dollars ($29,750,000.00) will be required to redeem or pay debentures and a note or notes of Sunray Oil Corporation now outstanding in the principal amount of Twenty-nine Million Dollars ($29,000,000.00). Of this amount Forty-eight Million, Eighty-six Thousand, One Hundred Seventy-five Dollars ($48,086,175.00) is to be raised through sale by the surviving corporation of Tide Water Associated Oil Corporation stock. It is proposed to raise the balance of approximately Seventy-five Million Dollars ($75,000,000.00), plus an additional Four Million Dollars ($4,000,000.00) for general funds, or a total of approximately Seventy-nine Million Dollars ($79,000,000.00), through sale to the public of securities of the surviving corporation consisting of debentures or [69] notes and preferred stock, and the successful consummation of such sale is subject to the vicissitudes of the investment market and the hazards inherent in every such operation. Further, at such effective date, as plaintiff is informed and believes, and therefore alleges the facts to be, the surviving corporation will become liable for the payment of commissions of Two Million, Forty-six Thousand Six Hundred Thirty-two Dollars ($2,046,632.00) as follows:

(a) In connection with the purchase of Pacific Western stock, One Million, Seven Hundred Fifty-four Thousand Dollars ($1,754,000.00);

(b) In connection with sale of Tide Water stock, Two Hundred Ninety-two Thousand, Six Hundred Thirty-two Dollars ($292,632.00); and will pay a premium or penalty of Seven Hundred Fifty Thousand Dollars ($750,000.00) for redemption of the debentures and note or notes of Sunray now outstanding; and in connection with said sale of Tide Water Associated Oil Corporation stock may incur an income or capital gains tax which might amount to as much as Seven Million, Five Hundred Thousand Dollars ($7,500,000.00).

In addition thereto, dissenting stockholders must be paid in cash the value of their stock. Said merger agreement contains no estimate of the amount required for that purpose, [70] nor does it provide any means of raising the money necessary therefor. The liabilities of the constituent corporations, before giving effect to the above transactions, and excluding capital stock and surplus accounts, are in excess of Thirty-five Million Dollars ($35,000,000.00).

(f) That the Getty Interests retain ownership of their stock in Pacific Western Oil Corporation, and Pacific Western Oil Corporation retains ownership of its stock in Mission Corporation, for a period of time sufficient to enable them, by voting the same, to make the merger effective and thereupon, under the terms of "Exhibit A" the Getty Interests will dispose of their said stock for cash,

will not acquire any of the securities of the surviving corporation, and will have no financial interest in the surviving corporation, and that unless said sale is consummated, the merger agreement does not become effective.

XV.

In view of the facts hereinbefore alleged and those hereinafter set forth, the proposed merger agreement, "Exhibit B" hereto, and the agreement between the Getty Interests and Sunray Oil Corporation, "Exhibit A" hereto, and the agreement for sale of said Tide Water stock are beyond the power of said corporations to make, contravene the statutes of the States of [71] Delaware and Nevada, and of the United States, and are contrary to public policy and void in this, to wit:

(a) That whether or not this defendant should enter into a merger agreement at all and, if so, the terms and conditions thereof, the ratio of exchange of stock of defendant for stock in the corporation surviving the merger, and whether or not a meeting of defendant's stockholders should be called to consider such question, have never been determined by any persons qualified or competent to act for this defendant or its stockholders.

(b) Said agreement of merger states only a part of the terms and conditions of the merger and the mode of carrying the same into effect.

(c) Pacific Western Oil Corporation and Sunray Oil Corporation are organized and exist under and by virtue of the laws of the State of Delaware, and

said laws require that in a merger of corporations the stock of the constituent corporations must be exchanged for shares or other securities of the merged or surviving corporation. Said laws do not permit the payment of cash for stock of one of the constituent corporations.

(d) That the sale of defendant's stock in Tide Water Associated Oil Corporation is a part of said merger plan, although not stated therein, and constitutes a partial liquidation of defendant for the sole benefit of Pacific Western Oil Corporation and its stockholders. [72]

(e) Said agreements permit the stockholders of Pacific Western Oil Corporation and Pacific Western Oil Corporation as a stockholder of this defendant to vote their stock for adoption of said plan and immediately thereafter to receive, at a rate determined and previously agreed upon by the Getty Interests, cash for their stock, and circumvent the statutes of Delaware and of Nevada providing for the payment of cash to dissenting stockholders and enables them to escape the operation thereof while requiring all other stockholders of defendant to be governed thereby.

(f) There is in fact no merger agreement, in that the purpose. intent, and effect of the entire transaction hereinbefore set out is to permit the Getty Interests to withdraw cash, in an amount determined and demanded by them, for their said stockholdings and control, to deplete and incumber the assets of defendant for that purpose, and to force

all shareholders of defendant other than Pacific Western Oil Corporation to accept for whatever then remains of defendant's assets junior securities in a new corporation, or in lieu thereof, force them to pursue the statutory remedy applicable to dissenting stockholders, without any provision for or assurance of the adequacy of such remedy or that funds will be available to make payment to dissenters. Article VI, Paragraph 4 of [73] "Exhibit B," the purported merger agreement, provides in part:

> "4. Anything herein or elsewhere to the contrary nothwithstanding, (a) this agreement shall not become effective and shall be null and void for all purposes if Sunray shall not have acquired, prior to or simultaneously with the time at which this agreement is otherwise to become effective, and shall not then be the owner and holder of, the 699,422 shares of Capital Stock of Pacific now owned by Thomas A. J. Dockweiler and George Franklin Getty, II, as trustees under a Declaration of Trust dated December 31, 1934, naming Sarah C. Getty as trustor and J. Paul Getty as original trustee, and the 470,027 shares of Capital Stock of Pacific now owned by J. Paul Getty, individually and as testamentary trustee under the Decree of Partial Liquidation of the Estate of Sarah C. Getty, deceased * * *

(g) Defendant is the owner of five hundred eighty-two thousand, six hundred fifty-seven (582,-657) shares, being approximately fifty-nine per cent (59%) of the capital stock of Skelly Oil Corporation, a Delaware corporation; that said five hundred eighty-two thousand, six hundred fifty-seven (582,-657) shares, at the date of this action, were of the market value of the sum of Fifty-eight Million, Two Hundred Sixty-five Thousand, Seven Hundred Dollars ($58,265,700.00); that by virtue of such stock ownership defendant has and exercises control of Skelly Oil Company, Sunray, Skelly and Pacific compete with each other in the acquisition of prospective and proven oil and gas leases and lands, in the purchase and sale of crude petroleum and natural gas, and in the purchase of equipment and facilities used in [74] connection therewith, in the States of Arkansas, Kansas, Louisiana, Montana, New Mexico, Texas and Wyoming; Skelly and Sunray so compete with each other in these additional States as well: Illinois, Mississippi, Oklahoma, Alabama, Colorado and Kentucky; and Sunray and Pacific Western so compete with each other in these additional States as well: Utah, California and Colorado. Skelly and Sunray compete with each other in the operation of refineries and natural gasoline plants, the acquisition of facilities and equipment used in connection therewith, and the sale of the products and by-products thereof, in many States. Each of said corporations is engaged in interstate commerce. If the proposed

merger be accomplished, Sunray Oil Corporation will acquire Pacific Western Oil Corporation and said Skelly Oil Company stock and will control the latter company, and the effect of such acquisition and control will be to substantially lessen or extinguish competition between Skelly, Pacific Western and Sunray, to restrain commerce in the territorial area in which said corporations operate and such acquisition may tend to create monopoly in the oil and gas business.

Wherefore, premises considered, plaintiff prays:

(a) That this complaint be considered as an application for a temporary injunction, and that the Court forthwith fix a date for its hearing as such, and that upon such hearing a [75] temporary injunction issue enjoining and restraining defendant, its officers, agents and employees from proceeding further with said proposed merger and enjoining and restraining defendant, its officers and agents, from holding, on December 6, 1947, or any other date, a stockholders' meeting to consider and vote upon said purported agreement of merger.

(b) That upon final hearing hereof defendant, its officers, agents and employees be enjoined from proceeding further with said proposed merger, from entering into the same, and from holding any stockholders' meeting to consider and vote upon said purported agreement of merger.

(c) That defendant be ordered to pay to plaintiff the reasonable cost and expense of this action, in-

cluding a reasonable attorney's fee for plaintiff's attorneys, and the costs of procuring depositions and evidence.

(d) That plaintiff have such other and further relief as may be equitable and just.

JOHN P. THATCHER,
WM. WOODBURN,
VILLARD MARTIN,
GARRETT LOGAN,
THEODORE RINEHART,
HAROLD C. STUART,
Attorneys for Plaintiff. [76]

EXHIBIT A

Memorandum of Agreement among Sunray Oil Corporation, a Delaware corporation (hereinafter called "Sunray"), Thomas A. J. Dockweiler and George Franklin Getty, II, as Trustees under that certain Declaration of Trust dated December 31, 1934, wherein Sarah C. Getty is named as trustor and J. Paul Getty as original trustee, (hereinafter called "Trustees") and J. Paul Getty, individually and as testamentary trustee under the Decree of Partial Distribution of the Estate of Sarah C. Getty, deceased, (hereinafter called "Getty");

Whereas, The Trustees and Getty are the owners and record holders of 699,422 shares and 470,027 shares, respectively, of capital stock of Pacific Western Oil Corporation (hereinafter called "Pacific"), out of a total of 1,371,730 shares of capital stock of Pacific issued and outstanding (exclusive of shares held in the treasury of Pacific); Pacific

is the owner and record holder of 641,808 shares of capital stock of Mission Corporation (hereinafter called "Mission"), out of a total of 1,374,145 shares of Mission issued and outstanding (exclusive of shares held in the treasury of Mission); and Mission is the owner and record holder of 582,657 shares of stock of Skelly Oil Company (hereinafter called "Skelly"), out of a total of 981,348.6 shares of capital stock of Skelly issued and outstanding (exclusive of shares held in the treasury of Skelly); and

Whereas, Sunray is desirous of bringing about a merger of Pacific, Mission and Skelly with and into Sunray, under the laws of Delaware (in which state Pacific, Skelly and Sunray are organized) and of Nevada (in which state Mission is organized); and [77]

Whereas, if such a merger can be consummated on terms which are fair and equitable to the holders of the securities of the respective companies, Sunray desires to purchase from the Trustees and from Getty, respectively, and the Trustees and Getty, respectively, desire to sell to Sunray, the shares of capital stock of Pacific held by them respectively at the prices and on the terms and conditions hereinafter contained;

Now, Therefore, in consideration of the premises and of the mutual agreements hereinafter contained, the parties hereto agree as follows:

1. Sunray agrees that it will use its best efforts, subject to the conditions hereinafter contained, to negotiate and cause to be consummated the merger of Pacific, Mission and Skelly into Sunray upon terms mutually agreeable to the respective boards

of directors and holders of the requisite number of shares of the stock of the respective companies.

2. Sunray agrees that immediately prior to such merger becoming effective it will purchase from the Trustees and from Getty, respectively, and the Trustees and Getty, respectively, agree that they will, at that time, sell to Sunray at the price of $68.00 per share cash their respective holdings of stock of Pacific, the agreement of merger to provide that the shares so purchased shall be cancelled.

3. The obligation of the Trustees and Getty to sell shall be subject to the following conditions: [78]

(a) Both the Trustees and Getty shall be satisfied, either through obtaining a closing agreement or, at their option, a ruling from the Internal Revenue Department or an opinion of counsel on which they are satisfied to rely, that any profits realized by them, or any of the beneficiaries of said Sarah C. Getty Trust dated December 31, 1934, upon such sale shall be taxable as capital gains under the Internal Revenue Code, and that none of said persons will incur liability as alleged transferees of Pacific as a result of such sale and the subsequent consummation of the merger.

(b) That the sale of such stock be made and the purchase price paid prior to December 23, 1947.

(c) That the holders of shares of Pacific other than the Trustees and Getty also be given an opportunity to sell their shares to Sunray at $68.00 per share, cash, the purchase price to be paid by Sunray to such stockholders or

their agents simultaneously with payment to the Trustee and Getty.

4. The Trustees and Getty have made and are making no representations or warranties of any kind or character in connection with this agreement or the sale of their holdings of Pacific, as provided for herein, and they and each of them are to be completely free from any liability for any alleged misrepresentation, breach of warranty, or non-disclosure concerning Pacific, Mission, Skelly, or the assets, businesses, properties, liabilities, financial condition, or past or present transactions of those corporations, or any of them.

5. The obligation of Sunray to purchase said shares of Pacific from the Trustees and Getty shall be subject to the following conditions:

(a) Sunray shall be satisfied, either through obtaining a closing agreement or, at its option, a ruling from the Internal Revenue Department or an opinion of counsel on which it is satisfied to rely, that the merger will constitute a tax free reorganization [79] within the meaning of Section 112 of the Internal Revenue Code.

(b) That present arrangements for the financing necessary to enable Sunray to purchase the shares of Pacific herein provided for and to consummate the merger, in accordance with the arrangements set forth in Exhibit "I" annexed hereto, which Sunray represents it has made with Eastman, Dillon & Co., or other adequate arrangements for such financing are successfully concluded.

(c) That both the Trustees and Getty sell and deliver the shares of capital stock of Pacific agreed to be sold by them respectively.

(d) That there will be no substantial adverse changes in the financial conditions of Pacific, Mission or Skelly, as shown on the respective balance sheets dated August 31, 1947, other than such as have occurred or may occur in the usual course of business.

In Witness Whereof, the parties hereto have executed this document under seal this 4th day of October, 1947.

Attest:

SUNRAY OIL CORPORATION,
By /s/ C. H. WRIGHT,
Pres.

/s/ THOMAS A. J. DOCKWEILER,
(L. S.)

/s/ GEORGE FRANKLIN
GETTY II,
(L. S.)

Trustees under that certain Declaration of Trust dated December 31, 1934, wherein Sarah C. Getty is named as trustor and J. Paul Getty as original trustee. [80]

/s/ J. PAUL GETTY,
(L. S.)

Individually and as testamentary trustee under the Decree of Partial Distribution of the Estate of Sarah C. Getty, deceased. [81]

EXHIBIT I

NSS:G 10/3/47 8c

This Agreement, made as of this 4th day of October, 1947, by and between Sunray Oil Corporation, a Delaware corporation (hereinafter called "Sunray"), and Eastman, Dillon & Co., a New York partnership (hereinafter called "Eastman Dillon"),

Witnesseth:

Whereas, Sunray is, simultaneously with the execution of this agreement, entering into an agreement (hereinafter called the "Getty Agreement") with Thomas A. J. Dockweiler and George Franklin Getty II, as Trustees, under that certain Declaration of Trust dated December 31, 1934, wherein Sarah C. Getty is named as trustor and J. Paul Getty as original trustee (hereinafter called "Trustees"), and J. Paul Getty individually and as Testamentary Trustee under the Decree of Partial Distribution of the Estate of Sarah C. Getty, deceased (hereinafter called "Getty"), under which Agreement Sunray agrees to purchase from Getty and the Trustees an aggregate of 1,169,449 shares of capital stock of Pacific Western Oil Corporation, a Delaware corporation (hereinafter called "Pacific Western") at $68 per share and agrees that the holders of the remaining outstanding shares of Pacific Western stock shall be given an opportunity to obtain the same price for their shares, all upon the terms and subject to the conditions therein set forth; and

Whereas, the Getty Agreement contemplates that immediately after the purchase of the Pacific Western stock, a merger shall be effected whereby Pacific Western, Mission Corporation, a Nevada corporation (hereinafter called "Mission"), and Skelly Oil Corporation, a Delaware corporation (hereinafter called "Skelly") will be merged into Sunray, as the continuing and surviving corporation; and [82]

Whereas, Sunray is also desirous of obtaining the assistance of Eastman Dillon in obtaining funds sufficient to reimburse it for the cost of the Pacific Western stock to be purchased pursuant to the Getty Agreement and to provide for cash requirements which may arise upon the merger as hereinafter mentioned, and Eastman Dillon is willing to provide such assistance upon the terms and conditions hereinafter set forth;

Now, Therefore, it is mutually agreed between the parties hereto as follows:

1. It is contemplated that, simultaneously with, or immediately after, the above-described merger's becoming effective, Sunray will obtain cash funds in an amount sufficient to reimburse it for the cost of the Pacific Western stock purchased by Sunray prior to the merger and pursuant to the Getty Agreement, or a maximum of approximately $93,300,000, such funds to be obtained (a) by borrowing from banks, (b) by the sale of a new issue of Debentures, and (c) by the sale of a new issue of Convertible Preferred Stock, and (d) possibly in part, to as much as $50,000,000, by the sale of certain assets to be acquired by Sunray as a result

of the merger. The aggregate amount so to be obtained may be decreased to the extent that stockholders of Pacific Western (other than Getty and the Getty Trust) decline to accept the offer to purchase their shares which Sunray agrees to make pursuant to the Getty Agreement; but such amount may also be subject to increased in the event that the parties hereto shall deem it advisable to provide cash funds to offset possible cash requirements of any of the constituent corporations which may arise as a consequence of such merger from exercise of any right of appraisal by any of the stockholders of any of such corporations.

In the event that no sale is made of assets to be acquired by Sunray upon the merger, as referred to above in clause (d) of [83] this paragraph 1, it is understood that the funds to be raised through bank loans and the sale of Debentures may amount to as much as $55,000,000, with the balance to be obtained through the sale of Convertible Preferred Stock; or, conversely, the funds to be raised through the sale of Convertible Preferred Stock may amount to as much as $55,000,000, with the balance to be obtained through bank loans and the sale of Debentures. In any event, the respective amounts of bank loans, Debentures and Convertible Preferred stock, and the respective terms and provisions thereof, shall be such as are agreed upon between the parties hereto, and Eastman Dillon shall formulate and recommend such respective amounts, terms and provisions as, in its best judgment, are most appropriate and advisable for Sunray under the circumstances.

2. Eastman Dillon agrees to use its best efforts to formulate a plan for the merger of Pacific Western, Mission and Skelly into Sunray which will be acceptable to the respective boards of directors and requisite number of stockholders of the constituent corporations and which will enable Sunray to accomplish the financing referred to in paragraph 1 hereof. Without restricting Eastman Dillon in the exercise of discretion in formulating and recommending such a plan of merger, it is now contemplated that such merger may be made on the following basis:

(1) Each outstanding share of capital stock of Pacific Western, of the par value of $10 per share, not purchased by Sunray as above provided, shall be changed into 7/10 of a share of new 4½ Preferred Stock, of the par value of $100 per share, of Sunray;

(b) Each share of capital stock of Mission, of the par value of $10 per share, and each share of common stock of Skelly, of the par value of $15 per share, respectively, is to be changed into such number of [84] shares of common stock of Sunray as shall be equitable under the circumstances and acceptable to the respective boards of directors; and

(c) Each share of Preferred Stock of Sunray is to be changed into 1 share of new 4½ Preferred Stock, of the par value of $100 per share, of Sunray, and each share of present common stock of Sunray, of the par value of $1 per share, is to remain unchanged.

3. Eastman Dillon agrees that it will assist Sunray in negotiating and consummating a bank loan or loans for the purpose specified in, and in the aggregate amount to be agreed upon as provided for in, paragraph 1 hereof.

4. Eastman Dillon further agrees that, subject to the public offering of the Convertible Preferred Stocks as provided for in paragraph 5 hereof, it will arrange for the private sale by Sunray (i. e., without the necessity of registration under the Securities Act of 1933) of an issue of Debentures as referred to in paragraph 1 hereof, or, in the alternative for the purchase of such Debentures for re-offering to the public as provided for in paragraph 6 hereof. In the event of any such private sale, Eastman Dillon shall be entitled to receive, and Sunray shall pay, a placement fee equal to such percentage of the principal amount of Debentures so sold by Sunray as shall be agreed upon.

5. Eastman Dillon further agrees that it will form a group of investment banking firms, in which it will be included, which will agree, subject to the aforesaid merger's becoming effective, to purchase from Sunray for re-offering to the public such aggregate principal amount of Debentures not privately sold by Sunray as provided for in paragraph 4, and such number of shares of Convertible Preferred Stock, at such aggregate agreed net price to [85] Sunray (exclusive of expenses), as will provide Sunray with that part of the funds described in paragraph 1 hereof as it shall be de-

termined are not to be obtained through bank loans, private sale of Debentures and sale of assets as hereinbefore referred to. Eastman Dillon agrees that it and the other members of the proposed investment banking group will enter into an underwriting agreement or underwriting agreements providing for the purchase and re-offering to the public of such Debentures, if any, and such Convertible Preferred Stock, such underwriting agreement or agreements to be substantially in the form of the agreement between Sunray and Eastman Dillon dated July 23, 1946 (a copy of which is annexed hereto as Exhibit A), with such additions, changes and modifications (including, without limitation, differences as to prices to the issuing corporation and underwriting discounts) as shall be appropriate under the circumstances. It is expressly understood, however, that the obligation of Eastman Dillon and the other proposed underwriters to enter into such agreement or agreements shall be subject to the condition that at the time such agreement is to be executed, political, economic or market conditions shall not be such as, in the judgment of Eastman Dillon, to render the re-offering of such securities impractical or inadvisable.

6. Each of the parties hereto agrees to use its best efforts to accomplish all of the objectives of this agreement on or prior to December 22, 1947.

7. This agreement shall bind and inure to the benefit of the parties hereto, their respective successors and assigns.

In Witness Whereof, the parties hereto have duly executed this agreement as of the day and year first above written.

SUNRAY OIL
CORPORATION,

/s/ C. H. WRIGHT,
President.

EASTMAN, DILLON & CO.

EXHIBIT B

AGREEMENT OF MERGER

Between Sunray Oil Corporation (a Delaware corporation) and a majority of its directors, Pacific Western Oil Corporation (a Delaware corporation) and a majority of its directors, and Mission Corporation (a Nevada corporation) and a majority of its directors.

Merging pursuant to Section 59 of the General Corporation Law of the State of Delaware and Section 39 of the General Corporation Law of the State of Nevada into Sunray Oil Corporation as the Surviving Corporation. [87]

Agreement of merger, dated the 18th day of October, 1947, by and between Sunray Oil Corporation, a Delaware corporation (hereinafter sometimes called "Sunray"), and a majority of the directors thereof, parties of the first part, Pacific Western Oil Corporation, a Delaware corporation (hereinafter sometimes called "Pacific"), and a majority of the directors thereof, parties of the second part, and Mission Corporation, a Nevada corporation (herein-

after sometimes called "Mission"), and a majority of the directors thereof, parties of the third part, Witnesseth:

Whereas, Sunray is a corporation duly organized and existing under the laws of the State of Delaware, having been incorporated on February 15, 1929, under the General Corporation Law of the State of Delaware, and has an authorized capital stock consisting of 470,000 shares of Preferred Stock, of the par value of $100 each, issuable in series, of which on October 1, 1947, 270,000 shares of 4¼% Cumulative Preferred Stock, Series A (hereinafter sometimes called "old Preferred Stock of Sunray"), were issued and outstanding, including 8,106.4 shares held in the treasury of Sunray which are to be retired prior to the effective date of this agreement, and 5,000,000 shares of Common Stock, of the par value of $1 each, of which on October 1, 1947, 4,671,185.8 shares were issued and outstanding, including 28,615,525 shares held in the treasury of Sunray; and

Whereas, Pacific is a corporation duly organized and existing under the laws of the State of Delaware, having been incorporated on November 10, 1928, under the General Corporation Law of the State of Delaware, and has an authorized capital stock consisting of 2,000,000 shares of capital stock, of the par value of $10 each (hereinafter sometimes called "Capital Stock of Pacific"), of which on October 1, 1947, 1,376,430 shares were issued and outstanding, including 4,700 shares held in the treasury of Pacific; and

Whereas, Mission is a corporation duly organized and existing under the laws of the State of Nevada, having been incorporated on December 31, 1934, under the General Corporation Law of the State of Nevada, and has an authorized capital stock consisting of 1,500,000 shares of capital stock, of the par value of $10 each (hereinafter sometimes called "Capital Stock of Mission"), of which on October 1, 1947, 1,379,545 shares were issued and outstanding including 5,400 shares held in the treasury of Mission and 641,808 shares owned by Pacific; and

Whereas, a majority of the directors of each of said corporations deems it advisable that said corporations merge, and said corporations, respectively, desire that they merge, under the General Corporation Law of the State of Delaware and the General Corporation Law of the State of Nevada;

Now, therefore, in consideration of the premises and of the mutual agreements, provisions, covenants and grants herein contained, the parties hereto hereby agree, in accordance with the provisions of the General Corporation Law of the State of Delaware and the General Corporation Law of the State of Nevada, that Sunray, Pacific and Mission shall be, and they hereby are, merged into a single corporation existing under the laws of the State of Delaware, to wit, Sunray, one of the parties hereto, and that Sunray shall merge, and it does hereby merge, into itself, Pacific and Mission and Pacific and Mission shall merge, and they do hereby merge, themselves into Sunray; and that the terms and conditions of the merger hereby agreed upon (hereinafter sometimes called the "merger") and the

mode of carrying the same into effect and the manner of converting the shares of each of said constituent corporations into shares of the surviving corporation, are and shall be as hereinafter set forth; and that the Certificate of Incorporation, as amended, of Sunray shall, on the effective date of this agreement, be and be deemed to be further amended as hereinafter set forth.

Article I.

Except as herein otherwise specifically set forth, the name, identity, existence, purposes, powers, franchises, rights and immunities of Sunray shall continue unaffected and unimpaired by the merger, and the corporate identities, existence, purposes, powers, franchises, rights and immunities of Pacific and Mission shall be merged into Sunray and Sunray shall be fully vested therewith. The respective organizations of Pacific and Mission, except in so far as they may be continued by statute, shall cease as soon as this agreement shall become effective, and thereupon Sunray, Pacific and Mission shall become a single corporation, existing under the laws of the State of Delaware, to wit, Sunray, one of the parties hereto. Sunray, Pacific and Mission are hereinafter sometimes called the "Constituent Corporations," Sunray as the single corporation which shall survive the merger is hereinafter sometimes called the "Surviving Corporation," and the date upon which the Constituent Corporations shall so become said single corporation is herein sometimes called the "effective date of this agreement."

Article II.

The Certificate of Incorporation of the Surviving Corporation, as amended, shall, on the effective date of this agreement, be and be deemed to be further amended to read as follows (the term "Corporation" as used in this Article referring to the "Surviving Corporation"):

First: The name of the Corporation is Sunray Oil Corporation.

Second: The principal office of the Corporation in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent is The Corporation Trust Company, No. 100 Tenth Street, Wilmington, Delaware.

Third: The nature of the business of the Corporation and the objects and purposes to be transacted, promoted or carried on by it are;

1. To buy, lease, hire, contract for, invest in, and otherwise acquire, and to own, hold, maintain, equip, operate, manage, mortgage, deal in and with, and to sell, lease, exchange and otherwise dispose of oil, gas, mineral and mining lands, wells, quarries, leases, rights, royalties, claims, locations, patents, concessions, easements, rights of way, and franchises, real property, and all interests therein, and lands containing or believed to contain petroleum, mineral, animal, vegetable and other oils, asphaltum, natural gas, gasoline, naphthene, oil shales, sulphur, salt, clay, coal, minerals, mineral substances, metals, ores of every kind, or other mineral

or volatile substances, and the stocks, bonds, notes, debentures, evidences of indebtedness, or obligations of corporations, companies, associations, trusts, organizations, firms, or individuals engaged in any similar business or otherwise, and to carry on in all its branches the business of exploring and drilling for, producing, gathering, storing, transporting, refining, distributing, marketing, selling and dealing in and with petroleum, mineral, animal, vegetable and other oils, asphaltum, natural gas, gasoline, naphthene, oil shales, sulphur, salt, clay, coal, minerals, mineral substances, metals, ores of every kind, or other mineral or volatile substances and products, by-products and derivatives thereof.

2. To produce, gather, refine, buy, contract for, invest in, and otherwise acquire, and to store, own, hold, mortgage, deal in and with, and to market, sell, exchange, and otherwise dispose of, and to transport, distribute, import and export petroleum, mineral, animal, vegetable, and other oils, asphaltum, natural gas, gasoline, naphthene, oil shales, sulphur, salt, clay, coal, minerals, mineral substances, metals, ores of every kind, or other mineral or volatile substances, and products, by-products and derivatives thereof.

3. To build, construct, buy, lease, hire, contract for, invest in, and otherwise acquire, and to own, hold, maintain, equip, operate, manage, mortgage, and deal in and with, and to sell lease, exchange and otherwise dispose of, refineries, factories, plants, works, buildings, houses, machinery, equipment, appliances, tanks, reservoirs, warehouses,

storage facilities, elevators, terminals, markets, docks, piers, wharves, drydocks, bulkheads, pipe lines, pumping stations, tank cars, trams, automobiles, trucks, cars, tankers, ships, tugs, lighters, barges, boats, vessels, aircraft and any other vehicles or craft for land, water or air transportation, for prospecting, exploring, and drilling for, producing, gathering, manufacturing, refining, treating, storing, transporting, handling, distributing, marketing, importing and exporting, petroleum, mineral, animal, vegetable and other oils, asphaltum, natural gas, gasoline, naphthene, oil shales, sulphur, salt, clay, coal, minerals, mineral substances, metals, ores of every kind, or other mineral or volatile substances, and products, by-products and derivatives thereof, hotels, and all property of every kind and character, to the extent that the same is or may be authorized by the laws of Delaware, and by the laws of any jurisdiction wherein any such property is located.

4. To the extent permitted by law, to build, construct, buy, lease, hire, contract for, invest in and otherwise acquire, and to own, hold, maintain, equip, operate, manage, mortgage, and deal in and with, and to sell, lease, exchange, and otherwise dispose of, railroads, tramways, turnpikes, runways, canals, and other means of land, water or air transportation, construction and repair shops and plants, irrigation, sewage, heat, light and power plants and systems, bridges, dams, embankments, reservoirs, ditches, reclamation, drainage, and sanitary works and systems, and water rights, works and systems,

useful or advisable, in the judgment of the Board of Directors of this Corporation, for its business.

5. To prospect, explore, drill and bore for, and to extract, produce, mine, mill, separate, convert, smelt, concentrate, evaporate, purify, skim, refine, reduce, crack, sweat, or treat in any manner or by any process whatsoever, blend, compound, manufacture, gather, store, transport, handle, distribute, market, buy, sell and deal in and with petroleum, mineral, animal, vegetable, and other oils, asphaltum, natural gas, gasoline, naphthene, oil shales, sulphur, salt, clay, coal, minerals, mineral substances, metals, ores of every kind, or other mineral or volatile substances, and products, by-products and derivatives thereof.

6. To do engineering and contracting, and to design, construct, drill, bore, sink, develop, improve, extend, maintain, operate and repair, wells, mines, plants, works, machinery, equipment, appliances, storage and transportation lines and systems, for this Corporation and for others.

7. To the extent permitted by law, to build, construct, buy, lease, hire, contract for, invest in, and otherwise acquire, and to own, hold, maintain, equip, operate, manage, mortgage, and deal in and with, and to sell, lease, exchange and otherwise dispose of, telegraph, telephone, radio and transportation lines, plants and systems, by air, land or water, useful or advisable, in the judgment of the Board of Directors of this Corporation, for its business.

8. To organize corporations, companies, associations, trusts, or organizations, under the laws of any

state, district, territory, nation, province, or government, and to sell, exchange, convey, assign, transfer, deliver and otherwise dispose of, to such corporations, companies, associations, trusts, or organizations, any part of the property, assets, and effects of this Corporation, less than the whole thereof, in exchange for the capital stock, bonds, notes, debentures or other securities, evidences of indebtedness or obligations of such corporations, companies, associations, trusts, or organizations, upon such terms and conditions as the Board of Directors shall determine.

9. To organize or cause to be organized under the laws of any state, district, territory, nation, province or government, corporations, companies, associations, trusts, or organizations for the purpose of accomplishing any or all of the objects for which this Corporation is organized, and to dissolve, wind up, liquidate, merge or consolidate the same, or cause the same to be dissolved, wound up, liquidated, merged or consolidated, and to organize, incorporate and reorganize corporations, companies, associations, trusts, or organizations, for any purpose permitted by law.

10. To subscribe to, buy, invest in, and otherwise acquire, to own, hold, deal in and with, and to sell, exchange, transfer, mortgage, pledge, hypothecate, or otherwise dispose of, the stocks, bonds, notes, debentures or other evidences of indebtedness or obligations of any individual, firm, corporation, company, association, trust, or organization, or of any private, public, quasi-public, or municipal cor-

poration, domestic or foreign, or of any domestic or foreign state, government or governmental authority, or of any political or administrative subdivision or department thereof; and all trust, participation or other certificates of or receipts evidencing interest in any such securities; and, while the owner of any such stocks, bonds, notes, debentures, evidences of indebtedness, obligations, certificates or receipts, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon for any and all purposes; and to loan money, and to take notes, open accounts and other similar evidences of debt as collateral security therefor.

11. To guarantee the payment of dividends on, or the payment of the principal of, or interest on, any stocks, bonds, notes, debentures, or other securities, evidences of indebtedness or obligations of any individual, firm, corporation, company, association, trust, or organization in which this [89] Corporation has an interest as stockholder, creditor or otherwise, or whose shares or securities it owns; to become surety for, and to guarantee the carrying out or performance of contracts, of every kind and character, of any individual, firm, corporation, company, association, trust or organization in which this Corporation has an interest as stockholder, creditor or otherwise, or whose shares or securities it owns.

12. To aid, by loan, subsidy, guaranty, or in any lawful manner whatsoever, any individual, firm,

corporation, company, association, trust, or organization whose stocks, bonds, notes, debentures or other securities or evidences of indebtedness or obligations are in any manner directly or indirectly held or guaranteed by this Corporation, or by any corporation in which this Corporation may have an interest as stockholder, creditor, guarantor, or otherwise, or whose shares or securities it owns, and to do any and all lawful acts and things designed to protect, preserve, improve or enhance the value of any stocks, bonds, notes, debentures or other securities, or evidences of indebtedness or obligations of any individual, firm, corporation, company, association, trust or organization in which this Corporation has an interest as stockholder, guarantor, creditor, or otherwise, or whose shares or securities it owns, and to lend money with or without collateral security.

13. To buy, lease, contract for, invest in, and otherwise acquire, and to own, hold, mortgage and deal in and with, and to sell, lease, exchange, transfer, convey and otherwise dispose of, rights and interests of every character and description, in or to or relating to, petroleum, mineral, animal, vegetable and other oils, asphaltum, natural gas, gasoline, naphthene, oil shales, sulphur, salt, clay, coal, minerals, mineral substances, metals, ores, or any other mineral or volatile substances, and in or to or relating to lands containing or believed to contain any of such substances, and leases, grants and contracts relating thereto, and relating to rights and interests of every character and description.

14. To manufacture, produce, buy, lease, hire, contract for, invest in, and otherwise acquire, and to own, hold, maintain, equip, mortgage and deal in and with, and to sell, lease, exchange, and otherwise dispose of, and to transport, import and export personal property of every character and description, without limit as to amount or value, in any part of the world, and any interest or right therein.

15. To buy, lease, contract for, invest in, and otherwise acquire, and to own, hold, maintain, equip, manage, improve, develop, mortgage, and deal in and with, and to sell, lease, exchange, transfer, convey and otherwise dispose of, real property, concessions, grants, land patents, franchises, easements, and rights of way, without limit as to amount or value, in any part of the world, and any royalty or other interest or right therein.

16. To manufacture, produce, construct, convert, buy, lease, hire, contract for, invest in, and otherwise acquire, and to hold, own, maintain, equip, operate, mortgage, and deal in and with, and to sell, lease, exchange and otherwise dispose of, export and import goods, wares, merchandise, machinery, equipment, appliances, materials and products of every kind and description, and do manufacturing and merchandising of every kind, and to carry on a general mercantile and commercial business in any part of the world.

17. To buy, lease, hire, contract for, invest in, and otherwise acquire, any property, real or personal, which it may deem desirable for the purpose of its business for cash, or otherwise, and to issue

its stocks, bonds, notes, debentures or other securities or evidences of indebtedness or obligations in payment therefor.

18. To sell, lease, exchange, convey, mortgage, transfer, assign and deliver, and otherwise dispose of, any part of the property, assets and effects of this Corporation, less than the whole thereof, and receive in payment therefor stocks, bonds, notes, debentures, or other securities or evidences of indebtedness or obligations of any individual firm, corporation, company, association, trust or organization, on such terms and conditions as the Board of Directors of this Corporation shall determine.

19. To purchase or acquire in any manner the stocks, bonds, notes, debentures or other securities or evidences of indebtedness, or obligations of any individual, firm, corporation, company, association, trust, or organization, and to issue its stocks, bonds, notes, debentures, or other securities or evidences of indebtedness or obligations in payment therefor, on such terms and conditions as the Board of Directors of this Corporation shall determine.

20. To purchase or otherwise acquire shares of its own capital stock, bonds, notes, debentures, or other obligations, and to hold, sell, exchange, mortgage, pledge, hypothecate, or otherwise dispose of or retire the same, provided that this Corporation shall not use any of its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of the capital of this Corporation, and provided, further, that the shares of its own capital stock belonging to this Corporation shall not be voted directly or indirectly.

21. To apply for, obtain, register, purchase, lease, or otherwise acquire, and hold, own, use, operate, introduce, sell, exchange, lease, assign, pledge, or otherwise dispose of, deal in, turn to account, or contract with reference to, any and all copyrights, trade-marks, trade names, labels, designs, brands, patents, and applications therefor, licenses, inventions, improvements, concessions, apparatus, appliances, formulae, and processes, used in connection with or secured under letters patent of the United States, or elsewhere, or otherwise; and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account, any such copyrights, trade-marks, trade names, labels, designs, brands, patents, applications, licenses, inventions, improvements, concessions, apparatus, appliances, formulae, processes and the like, or any property, right, or information in connection therewith; and to grant and issue licenses or sublicenses, partial, exclusive, or territorial, under or in respect of any and all such copyrights, trade-marks, trade names, labels, designs, brands, patents, applications, licenses, inventions, improvements, concessions, apparatus, appliances, formulae and process.

22. To borrow money for its corporate purposes, and to draw, make, accept, endorse, execute and issue bonds, notes, debentures, bills of exchange, warehouse receipts, warrants and other negotiable instruments and obligations, and in order to secure the same, or any of its contracts or obligations, to

convey, transfer, assign, mortgage, pledge and deliver all or any part of the property of this Corporation upon such terms and conditions as the Board of Directors shall determine.

23. To make, perform and carry out contracts of every kind made for any lawful purpose with, and to act as agent, representative or factor for, any individual, firm, corporation, company, association, trust, or organization, or any public, quasi-public, or municipal corporation, domestic or foreign, or any domestic or foreign state, government or governmental authority or agency.

24. To purchase, or otherwise acquire, the whole or any part of the property, assets, business, good will, rights and franchises of any individual, firm, corporation, company, association, trust, or organization; to assume the whole or any part of the bonds, mortgages, franchises, leases, contracts, indebtedness, guarantees, liabilities and obligations of any individual, firm, corporation, company, association, trust, or organization, or give guarantees in respect thereof; and to hold or in any manner dispose of the whole or any part of the property, assets, business, good will, rights and franchises so purchased or acquired, and to conduct and manage, in any lawful manner, the whole or any part of any business so purchased or acquired, and to exercise all the powers, necessary or convenient in and about the conduct and management thereof.

25. To carry on any other lawful business or operation deemed advantageous, desirable or incidental to any of the purposes herein specified, or

calculated, directly or indirectly, to promote the interests of this Corporation, or to enhance the value of its properties, securities, or assets of any kind whatsoever.

26. To execute and deliver general or special powers of attorney to individuals, firms, corporations, companies, associations, trusts and organizations in the United States, or any other country, and to revoke the same as the Board of Directors shall determine.

27. To have one or more of its offices, and to carry on any or all of its operations and business, within or without the State of Delaware, in any part of the world, and to have and exercise all the rights and powers now or hereafter conferred by the laws of the State of Delaware upon corporations organized under the same statutes as this Corporation. [90]

The foregoing clauses shall be construed both as objects and powers, and the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this Corporation; and the purposes, objects and powers specified in each of the paragraphs of Article Third hereof shall, except as otherwise expressly provided, in nowise be limited or restricted by reference to or inference under the terms of any other article, clause or paragraph hereof, but each of the purposes, objects and powers specified herein shall be regarded as independent purposes, objects and powers.

Fourth: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 15,800,000 shares, of which 500,000 shares shall be Cumulative Prior Preferred Stock of the par value of $100 each (hereinafter called "Prior Preferred Stock"), 300,000 shares shall be Cumulative Second Preferred Stock, of the par value of $100 each (hereinafter called "Second Preferred Stock") and 15,000,000 shares shall be Common Stock, of the par value of $1 each (hereinafter called "Common Stock").

A statement of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, of the shares of stock of each class which the Corporation shall have authority to issue, the fixing of which by the Certificate of Incorporation, as amended, is desired, and the grant of authority to the Board of Directors to fix by resolution or resolutions the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, of the respective series of Prior Preferred Stock and Second Preferred Stock which are not fixed herein, is as follows:

Prior Preferred Stock

1. The Prior Preferred Stock may be issued from time to time in one or more series. The designations, preferences and relative, participating, optional and other special rights of each such series and the qualifications, limitations or restrictions thereof may differ from those of any and all other

series already outstanding, and the Board of Directors of the Corporation is hereby expressly granted authority, subject to the provisions hereof, to fix, by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Prior Preferred Stock, the designations, preferences and relative participating, optional and other special rights of such series, and the qualifications, limitations or restrictions thereof, in any or all of the following, but in no other, respects:

(a) the number of shares to constitute such series and the designation of such series;

(b) the rate of dividends (not exceeding 7% per annum) which the shares of such series shall be entitled to receive and the date or dates from which dividends thereon shall be cumulative;

(c) the amount of the premium, if any (not exceeding $10 per share), over and above $100 per share and any accrued dividends thereon, which the shares of such series shall be entitled to receive upon the redemption thereof;

(d) the amount of the premium, if any (not exceeding $10 per share), over and above $100 per share and any accrued dividends thereon, which the shares of such series shall be entitled to receive upon the voluntary dissolution, liquidation or winding up of the Corporation;

(e) the right, if any, of holders of shares of such series to convert the same into or exchange

the same for stock of any other series or class or other securities and the terms and conditions of such conversion or exchange; and

(f) the terms of any purchase fund or sinking fund for the purchase or redemption of shares of such series;

provided, however, that the initial series of Prior Preferred Stock shall consist of 403,500 shares, shall be designated "Cumulative Prior Preferred Stock, 4½% Series of 1947" (hereinafter called "1947 Prior Preferred Stock") shall have the dividend rate and the dates from which dividends thereon shall be cumulative, shall be entitled to receive the respective premiums upon redemption or upon the voluntary dissolution, liquidation or winding up of the Corporation and shall be entitled to the benefit of the sinking fund, provided in Section 10 of this Article Fourth, and shall have no right of conversion or exchange. All shares of Prior Preferred Stock of the same series shall be identical in all respects except, if so provided, as to the dates from which dividends become cumulative, and all shares of Prior Preferred Stock of all series shall be of equal rank and shall be identical in all respects except as permitted by the foregoing provisions of this Section 1.

2. The holders of Prior Preferred Stock of each series shall be entitled to receive, and the Corporation shall be bound to pay, only as and when declared by the Board of Directors and out of funds legally available for the payment of dividends,

cumulative dividends, in the case of 1947 Prior Preferred Stock, at the rate fixed in Section 10 of this Article Fourth, and in the case of Prior Preferred Stock of each other series, at the annual rate fixed with respect to such series in accordance with Section 1 of this Article Fourth, and no more, payable in cash, quarterly, on the first days of January, April, July and October in each year. In case Prior Preferred Stock of more than one series is outstanding, the Corporation, in making any dividend payment upon the Prior Preferred Stock, shall make dividend payments ratably upon all outstanding shares of Prior Preferred Stock of all series in proportion to the amount of dividends accrued thereon to the date of such dividend payment. If dividends on any shares of Prior Preferred Stock shall be in arrears, the holders thereof shall not be entitled to any interest, or sum of money in lieu of interest, thereon.

3. The Corporation, at the option of the Board of Directors, may redeem at any time, or from time to time, any series of Prior Preferred Stock or any part of any series, at $100 per share, plus accrued dividends thereon to the date fixed for redemption, plus a premium, in the case of the 1947 Prior Preferred Stock, in the amount fixed in Section 10 of this Article Fourth, and in the case of Prior Preferred Stock of any other series, in the amount, if any, fixed with respect to such series in accordance with Section 1 of this Article Fourth (the total amount per share so payable upon any redemption of Prior Preferred Stock being herein referred to

as the "redemption price"); provided, however, that not less than 30 days previous to the date fixed for redemption a notice of the time and place thereof shall be given to the holders of record of the shares of Prior Preferred Stock so to be redeemed, by mailing a copy of such notice to such holders at their respective addresses as the same appear upon the books of the Corporation. In case of redemption of less than all of the outstanding Prior Preferred Stock of any one series, such redemption shall be made pro rata, or the shares to be redeemed shall be chosen by lot, in such manner as the Board of Directors may determine.

At any time after notice of redemption has been given in the manner herein prescribed, or after the Corporation shall have delivered to any bank or trust company having its principal office in the Borough of Manhattan, City and State of New York, or in the City of Tulsa, State of Oklahoma, and having a capital, surplus and undivided profits of at least $5,000,000, an instrument in writing irrevocably authorizing such bank or trust company to give notice of redemption of all the outstanding Prior Preferred Stock of any one or more series in the name of the Corporation and in the manner herein prescribed, the Corporation may deposit the amount of the aggregate redemption price with any such bank or trust company named in such notice, in trust for the holders of the shares so to be redeemed, payable on the date fixed for redemption as aforesaid and in the amounts aforesaid to the respective order of such holders upon endorsement

to the Corporation or otherwise, as may be required, and upon surrender of the certificates for such shares. Upon deposit of the aggregate redemption price as aforesaid, or if no such deposit is made, upon said date fixed for redemption (unless the Corporation shall default in making payment of the redemption price as set forth in said notice) such holders shall cease to be stockholders with respect to said shares and shall be entitled only to such conversion or exchange rights (if any) on or before the date fixed for redemption as may be provided with respect to such shares or to receive the redemption price on the date fixed for redemption as aforesaid, from such bank or trust company or from the Corporation, without interest thereon, upon endorsement, if required, and the surrender of the certificate for such shares, as [91] aforesaid; provided that any funds so deposited by the Corporation and unclaimed at the end of 5 years from the date fixed for such redemption shall be repaid to the Corporation upon its request, after which repayment the holders of such shares so called for redemption shall look only to the corporation for payment of the redemption price thereof. Any funds so deposited which shall not be required for such redemption because of the exercisse, subsequent to the date of such deposit, of any right, conversion or otherwise, shall be returned to the Corporation forthwith. Any interest accrued on any funds so deposited shall belong to the Corporation and shall be paid to it from time to time.

Subject to the provisions hereof, the Board of Directors shall have authority to prescribe the manner in which Prior Preferred Stock shall be redeemed from time to time. No shares of Prior Preferred Stock which shall have been redeemed or which shall have been purchased by the application of capital or otherwise retired pursuant to the provisions of the General Corporation Law of the State of Delaware shall be reissued or resold.

4. Upon any dissolution, liquidation or winding up of the Corporation, the holders of Prior Preferred Stock of each series shall be entitled, before any distribution or payment is made to the holders of any class of stock ranking junior to the Prior Preferred Stock, to be paid in cash $100 per share, plus accrued dividends thereon to the date of payment, plus, if such dissolution, liquidation or winding up shall be voluntary, a premium, in the case of 1947 Prior Preferred Stock, in the amount fixed in Section 10 of this Article Fourth, and in the case of Prior Preferred Stock of any other series, in the amount, if any, fixed with respect to such series in accordance with Section 1 of this Article Fourth, and no more. In case the net assets of the Corporation are insufficient to pay the holders of all outstanding shares of Prior Preferred Stock of all series the full amounts to which they are respectively entitled, the entire net assets of the Corporation shall be distributed ratably to the holders of all outstanding shares of Prior Preferred Stock of all series in proportion to the amounts to which they are respectively entitled. The consolidation or

merger of the Corporation with or into another corporation, or the sale, lease or conveyance of all or substantially all of the assets of the Corporation as an entirety shall not be deemed a dissolution, liquidation or winding up of the Corporation for the purposes of this Section 4, and of Sections 14 and 21, of this Article Fourth.

5. Except as otherwise required by law and subject to the provisions of Section 6 of this Article Fourth, no holder of Prior Preferred Stock shall have any right to vote for the election of directors or for any other purpose; provided, however, that if and whenever dividends on any series of the Prior Preferred Stock shall be in arrears and such arrears shall aggregate an amount at least equal to 6 quarterly dividends upon such series, then and in such event and until such right shall cease as hereinafter provided, the holders of the outstanding Prior Preferred Stock shall be entitled, at all elections of directors, voting separately as a class, to elect 2 members of the Board of Directors; provided further, however, that in case a majority of the outstanding Prior Preferred Stock shall not be present in person or represented by proxy at any meeting at which the holders of the Prior Preferred Stock shall be entitled to vote for the election of directors, then the holders of the Prior Preferred Stock so present or represented shall be entitled, voting concurrently with the holders of the Common Stock and not as a separate class, to vote for the election of directors. Whenever all arrears of dividends on the Prior Preferred Stock shall have been

paid and dividends thereon for the current quarterly dividend period shall have been paid or declared and provided for, then the right of the holders of the Prior Preferred Stock to vote as provided in this Section 5 at all elections of directors shall cease, but subject always to the same provisions for the vesting of such voting rights in the case of any such future arrearages in dividends.

In any case in which the holders of the Prior Preferred Stock shall be entitled to vote pursuant to the provisions of this Section 5, or of Section 6, of this Article Fourth or pursuant to law, each holder of Prior Preferred Stock shall be entitled to one vote for each share thereof held.

6 (a). So long as any shares of Prior Preferred Stock are outstanding, the consent of the holders of at least two-thirds of the outstanding shares of Prior Preferred Stock, given in person or by proxy, either in writing or at a meeting called for that purpose, at which the holders of the Prior Preferred Stock shall vote separately as a class, shall be necessary for effecting or validating any one or more of the following:

(1) The authorization of any additional class of stock ranking prior to or on a parity with the Prior Preferred Stock, or the increase in the authorized amount of the Prior Preferred Stock or of any class of stock ranking prior to or on a parity with the Prior Preferred Stock, or the authorization or increase in the authorized amount of any class of stock

or obligation convertible into or evidencing the right to purchase any stock of any class ranking prior to or on a parity with the Prior Preferred Stock;

(2) The amendment, alteration or repeal of any of the provisions of the Certificate of Incorporation of the Corporation or any amendment thereto or any other certificate filed pursuant to law which would adversely affect any of the rights or preferences of outstanding shares of Prior Preferred Stock; provided, however, that if any such amendment, alteration or repeal would adversely affect the rights or preferences of outstanding shares of Prior Preferred Stock of any particular series without correspondingly affecting the rights or preferences of outstanding shares of all series, then like consent by the holders of at least two-thirds of the shares of Prior Preferred Stock of that particular series at the time outstanding shall also be necessary for effecting or validating any such amendment, alteration or repeal:

(3) The voluntary dissolution, liquidation or winding up of the Corporation, or the sale, lease or conveyance by the Corporation (except to a Wholly-Owned Subsidiary) of all or substantially all of its property or business;

(4) The merger or consolidation of the Corporation with or into any other corporation unless (A) the corporation resulting from or surviving such merger or consolidation will have

after such merger or consolidation no class of stock and no other securities, either authorized or outstanding, ranking prior to or on a parity with the Prior Preferred Stock (or the stock, if any, issued to holders of Prior Preferred Stock in lieu thereof in connection with such merger or consolidation) except the same number of shares of stock and the same amount of other securities with the same rights and prefences as the stock and securities of the Corporation, respectively, authorized and outstanding immediately preceding such merger or consolidation, and (B) each holder of Prior Preferred Stock immediately preceding such merger or consolidation shall receive in connection with such merger or consolidation the same number of shares, with the same rights and preferences, of the resulting or surviving corporation;

(5) The sale, lease or conveyance by any Subsidiary (except to the Corporation or a Wholly-Owned Subsidiary) of all or substantially all of its property or business;

(6) The merger or consolidation of any Subsidiary with or into any other corporation except the Corporation or a Wholly-Owned Subsidiary;

(7) The giving by the Corporation or any Subsidiary of any guaranty or similar obligation for the payment of any indebtedness of any other corporation or person or persons or for the payment of any amounts with respect to

the stock of any other corporation; provided, however, that this provision shall not prevent the Corporation of any Subsidiary, without such consent, from (A) guaranteeing the performance of any contract, or the payment of any obligation, of a Subsidiary, or (B) guaranteeing customers' notes and trade acceptances received by the Corporation or any Subsidiary in the ordinary and regular course of its business, or (C) extending, renewing or refunding any such guaranty or similar obligation;

(8) The issue of sale (except to the Corporation or a Wholly-Owned Subsidiary) by any Subsidiary of any common stock of such Subsidiary; provided, however, that this provision shall not prevent, without such consent, the issue or sale by a Subsidiary, which is not a Wholly-Owned Subsidiary, of common stock to others than the Corporation if, simultaneously with such issue or sale, there is issued or sold to the Corporation or one or more Wholly-Owned Subsidiaries common [92] stock in an amount sufficient to maintain the proportionate equity interest and voting control of the Corporation and its Wholly-Owned Subsidiaries in the Subsidiary so issuing or selling such stock; or

(9) The sale or other disposal by the Corporation of any Subsidiary (except to the Corporation or a Wholly-Owned Subsidiary) of any obligation or stock of any other Subsidiary

unless prior thereto or at the same time all of the obligations and stock of such other Subsidiary owned directly or indirectly by the Corporation and its Subsidiaries are sold or disposed of as an entirety for a consideration which shall not include capital stock of another corporation and which shall not include obligations of another corporation unless the shares of stock and obligations so sold or disposed of shall be validly pledged, free and clear of all other liens, charges or encumbrances, as security for such obligations.

(b) So long as any shares of Prior Preferred Stock are outstanding and unless

(I) Consolidated Net Income for any 12 consecutive calendar months out of the 15 calendar months next preceding the date of the proposed transaction for the purpose of which the calculation is made and the annual average of Consolidated Net Income for the 2 completed fiscal years next preceding the date of such transaction, Consolidated Net Income being increased in each case by an amount equal to the amount of interest on Funded Debt deducted in determining such Consolidated Net Income, shall each have been at least equal to 250% of the sum of (i) the total annual interest requirements on all Consolidated Funded Debt to be outstanding after giving effect to such transaction, plus (ii) the total annual dividend requirements on all shares of

Prior Preferred Stock and on all shares of all other classes of stock of the Corporation ranking prior to or on a parity with the Prior Preferred Stock and on all shares of all classes of stock of Subsidiaries not owned by the Corporation or any Wholly-Owned Subsidiary, ranking prior to the common stocks of such subsidiaries, which shares are to be outstanding after giving effect to such transaction, and

(II) Consolidated Net Tangible Assets as of any date not more than 90 days preceding the date of the proposed transaction for the purpose of which the calculation is made (adjusted, however, to give effect to such proposed transaction and the net proceeds received or the net expenditures incurred, as the case may be, by the Corporation and its Subsidiaries from the issuance, sale, acquisition or redemption of, or other dealings in, securities of the Corporation and its Subsidiaries after the date as of which Consolidated Net Tangible Assets were calculated but on or prior to the date of such proposed transaction) shall be at least equal to 150% of the sum of (i) Consolidated Funded Debt to be outstanding after giving effect to such transaction, plus (ii) the involuntary liquidation price of all outstanding shares of Prior Preferred Stock and of all other classes of stock of the Corporation ranking prior to or on a parity with the Prior Preferred Stock and of all shares of all classes of stock of Subsidiaries, not owned by the Corporation or any

Wholly-Owned Subsidiary, ranking prior to the common stocks of such Subsidiaries, which shares are to be outstanding after giving effect to such transaction, plus (iii) the capital and surplus applicable to all shares of common stocks of Subsidiaries, not owned by the Corporation or any Wholly-Owned Subsidiary, which are to be outstanding after giving effect to such transaction, such capital and surplus being as shown by the books of such Subsidiaries.

the consent of the holders of at least two-thirds of the outstanding shares of Prior Preferred Stock, given in person or by proxy, either in writing or at a meeting called for that purpose, at which the holders of the Prior Preferred Stock shall vote separately as a class, shall be necessary for effecting or validating any one or more of the following:

(1) The creation, issuance, sale or assumption by the Corporation of any Subsidiary of any Funded Debt; provided, however, that this provision shall not prevent, without such consent (A) the creation, issue and sale by the Corporation of an aggregate of not exceeding $25,000,000 principal amount of unsecured debentures and/or notes on or about the effective date of the Agreement of Merger setting forth this Article Fourth or (B) the creation, issuance, sale or assumption by the Corporation of any Subsidiary of any Funded Debt for the purpose of extending, renewing or refunding

at least an approximately equal aggregate principal amount of Funded Debt of the Corporation or such Subsidiary, or (C) the creation by any Subsidiary of any Funded Debt for issuance to, and the issuance and sale thereof to, the Corporation or a Wholly-Owned Subsidiary, or the extending, renewing or refunding of any such Funded Debt, or (D) the creation by the Corporation of any Subsidiary of Funded Debt secured by purchase money mortgages or other purchase money liens on property which subsequent to the effective date of the Agreement of Merger setting forth this Article Fourth may be acquired by by the Corporation or any Subsidiary, or the assumption by the Corporation or any Subsidiary of Funded Debt secured by mortgages or other liens existing on such property at the time of acquisition, provided that such Funded Debt shall not exceed two-thirds of the cost or fair market value (as determined in good faith by the Board of Directors of the Corporation) of such property at the time of acquisition, whichever is less, or the extending, renewing or refunding of any such Funded Debt, mortgage or other lien;

(2) The issuance by the Corporation of any authorized Prior Preferred Stock in excess of the number of shares initially issued pursuant to the provisions of Article IV of the Agreement of Merger setting forth this Article

Fourth or of any shares of any class of stock ranking prior to or on a parity with the Prior Preferred Stock or of any class of stock or obligation convertible into or evidencing the right to purchase any stock of any class ranking prior to or on a parity with the Prior Preferred Stock; or

(3) The issuance by any Subsidiary (except to the Corporation or a Wholly-Owned Subsidiary) of any shares of any class of stock of such Subsidiary ranking prior to the common stock of such Subsidiary.

7. (a) In no event, so long as any of the Prior Preferred Stock shall be outstanding, shall any dividend whatsoever, whether in cash, stock or otherwise, be declared or paid, or any distribution be made, on any stock of the Corporation of a class ranking junior to the Prior Preferred Stock, nor shall any shares of any such junior class of stock be purchased by the Corporation or by a Subsidiary or be redeemed by the Corporation, nor shall any moneys be paid to or set aside or made available for a purchase fund or sinking fund for the purchase or redemption of any shares of any such junior class of stock, unless

(1) all dividends on all outstanding shares of Prior Preferred Stock of all series for all past dividend periods shall have been paid and the full dividends for the then current quarterly dividend period shall have been paid or declared and provided for, and

(2) the Corporation shall have paid or set aside all amounts, if any, theretofore required to be paid or set aside as and for all purchase funds and sinking funds, if any, for the shares of Prior Preferred Stock of all series for the then current fiscal year, and all defaults, if any, in complying with any such purchase fund and sinking fund requirements in respect of previous fiscal years shall have been made good.

(b) In no event, so long as any Prior Preferred Stock shall be outstanding, shall any dividend, other than a dividend payable in stock of the Corporation of a class ranking junior to the Prior Preferred Stock, be declared or paid, or any distribution be made, on any such junior class of stock, nor shall any shares of any such junior class of stock be purchased by the Corporation or by a Subsidiary or be redeemed by the Corporation, nor shall any moneys be paid to or set aside or made available for a purchase fund or sinking fund for the purchase or redemption of any shares of any such junior class of stock, except to the extent that the sum of

(1) Consolidated Net Income subsequent to December 31, 1946, plus

(2) $5,000,000, plus

(3) the aggregate net proceeds received by the Corporation from the issue and sale on or subsequent to the effective date of the Agreement of Merger setting forth this Article Fourth of shares of stock of the Corporation

of any class ranking junior to the Prior Preferred Stock, which [93] net proceeds, to the extent that any thereof consists of property, rather than cash, shall be taken at the fair value of such property as determined by the Board of Directors of the Corporation, plus

(4) the aggregate net proceeds received by the Corporation from the issue and sale of any Funded Debt or any shares of Prior Preferred Stock or stock of any class ranking prior to or on a parity with the Prior Preferred Stock, which subsequent to the effective date of the Agreement of Merger setting forth this Article Fourth may have been converted into shares of stock of the Corporation of any class ranking junior to the Prior Preferred Stock, which net proceeds, to the extent that any thereof consists of property, rather than cash, shall be taken at the fair value of such property as determined by the Board of Directors of the Corporation.

shall exceed the sum of

(1) the aggregate amount of dividends (except dividends payable in shares of stock of the Corporation of a class ranking junior to the Prior Preferred Stock) paid or declared and distributions (not including amounts applied to the purchase or redemption of shares of any stock) made by the Corporation subsequent to December 31, 1946, plus

(2) the aggregate amount expended by the Corporation and its Subsidiaries subsequent to the effective date of the Agreement of Merger setting forth this Article Fourth for the purpose of acquiring or redeeming shares of stock of the Corporation of any class ranking junior to the Prior Preferred Stock.

8. Any purchase fund or sinking fund provided for the purchase or redemption of Prior Preferred Stock of any series (other than 1947 Prior Preferred Stock) may provide for the purchase or redemption of stock of such series and of any other series of Prior Preferred Stock created thereafter.

No shares of prior Preferred Stock which shall have been purchased or redeemed through operation of any purchase fund or sinking fund, or for which credit against any purchase fund or sinking fund requirement shall have been taken, shall be applied against any subsequent purchase fund or sinking fund requirement or reissued or resold.

9. In case Prior Preferred Stock of any series shall be convertible into or exchangeable for stock of any other series or class or other securities, no shares of Prior Preferred Stock of such series which shall have been so converted or exchanged shall be reissued or resold.

10. The 1947 Prior Preferred Stock shall be entitled:

(a) To receive dividends at the rate of 4½% of the par value thereof per annum, which dividends shall be cumulative, with re-

spect to shares issued on the effective date of the Agreement of Merger setting forth this Article Fourth, from the day on which such shares are issued, and with respect to shares issued after such date, from the first day of the quarterly dividend period within which such shares are issued;

(b) To receive upon the redemption thereof a premium, over and above $100 per share and any accrued dividends thereon, of $4 per share if redeemed prior to January 1, 1950; $3 per share if redeemed on or after January 1, 1950, but prior to January 1, 1952; $2 per share if redeemed on or after January 1, 1952, but prior to January 1, 1954; and $1 per share if redeemed on or after January 1, 1954, but prior to January 1, 1956; but to receive no premium if redeemed on or after January 1, 1956, or if redeemed through the operation of the sinking fund provided for in paragraph (d) of this Section 10;

(c) To receive upon the voluntary dissolution, liquidation or winding up of the Corporation, a premium, over and above $100 per share and any accrued dividends thereon, in the amount per share as the premium which the shares of such series would be entitled to receive pursuant to the provisions of paragraph (b) of this Section 10 if, on the date of payment, such shares were being redeemed pursuant to the provisions of Section 3 of this Article Fourth;

(d) To the benefit of a sinking fund as and for which the Corporation, so long as any shares of 1947 Prior Preferred Stock shall be outstanding, shall set aside in cash on July 1, 1948, and on each January 1 and July 1 thereafter, an amount equal to $100 multiplied by 1½% of the greatest number of shares of 1947 Prior Preferred Stock at any one time theretofore outstanding, less an amount equal to $100 per share for such number of shares of 1947 Prior Preferred Stock as the Corporation may credit against any such sinking fund requirement out of any shares purchased or redeemed by it (other than shares purchased or redeemed through the operation of the sinking fund and other than fractions of shares in respect of which the Corporation shall have paid cash under the provisions of subdivision (e) of Article IV of the Agreement of Merger setting forth this Article Fourth), at any time prior to the setting aside of such sinking fund requirement and for which credit shall not theretofore have been taken against any such sinking fund requirement.

At any time or times after any January 1 or July 1 and prior to the next May 1 or November 1, as the case may be, the Corporation may apply any cash then in the sinking fund to the purchase of shares of 1947 Prior Preferred Stock, if obtainable, at a price or prices not exceeding $100 per share plus accrued dividends to the date of purchase. Such pur-

chases may be made at public or private sale, with or without advertisement, in such manner, from such person or persons, and at such price or prices (subject to the provisions of the preceding sentence) as the Corporation in its discretion may determine.

If, on any May 1 or November 1 the unexpended balance of cash in the sinking fund shall exceed $10,000, such balance, to the extent necessary substantially to exhaust the same, shall be applied to the redemption of shares of 1947 Prior Preferred Stock on or before the dividend payment date next following such May 1 or November 1, as the case may be (provided, however, that if such balance shall not exceed $10,000 the Corporation may, but shall not be required to, make such redemption) in the manner prescribed by Section 3 of this Article Fourth at the redemption price specified in paragraph (b) of this Section 10 in respect of shares redeemed through the operation of the sinking fund. Any amount of such balance not so applied to such redemption shall be retained in the sinking fund and shall be applied with subsequent sinking fund instalments to the purchase of redemption of 1947 Prior Preferred Stock as above provided.

Accrued dividends on shares of 1947 Prior Preferred Stock purchased or redeemed through the operation of the sinking fund shall be paid by the Corporation out of its general funds.

Second Preferred Stock

11. The Second Preferred Stock may be issued from time to time in one or more series. The designations, preferences and relative, participating, optional and other special rights of each such series and the qualifications, limitations or restrictions thereof may differ from those of any and all other series already outstanding, and the Board of Directors of the Corporation is hereby expressly granted authority, subject to the provisions hereof, to fix, by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Second Preferred Stock, the designations, preferences and relative, participating, optional and other special rights of such series, and the qualifications, limitations or restrictions thereof, in any or all of the following, but in no other respects:

(a) the number of shares to constitute such series and the designation of such series;

(b) the rate of dividends (not exceeding 7% per annum) which the shares of such series shall be entitled to receive and the date or dates from which dividends thereon shall be cumulative;

(c) the amount of the premium, if any (not exceeding $10 per share), over and above $100 per share and any accrued dividends thereon which the shares of such series shall be entitled to receive upon the redemption thereof;

(d) the amount of the premium, if any (not exceeding $10 per share), over and above $100 per share and any accrued dividends thereon which the shares of such series shall be entitled to receive upon the voluntary dissolution, liquidation or winding up of the Corporation;

(e) the right, if any, of holders of shares of such series to convert the same into or exchange the same for stock of any other series or class or other securities and the terms and conditions of such conversion or exchange; and

(f) the terms of any purchase fund or sinking fund for the purchase or redemption of shares of such series.

All shares of Second Preferred Stock of the same series shall be identical in all respects, except, if so provided, as to the dates from which dividends become cumulative, and all shares of Second Preferred Stock of all series shall be of equal rank and shall be identical in all respects except as permitted by the foregoing provisions of this Section 11.

12. Subject to the prior rights of the Prior Preferred Stock and to the limitations set forth in Section 7 of this Article Fourth, the holders of Second Preferred Stock of each series shall be entitled to receive, and the Corporation shall be bound to pay, only as and when declared by the Board of Directors and out of funds legally available for the payment of dividends, cumulative divi-

dends at the annual rate fixed with respect to such series in accordance with Section 11 of this Article Fourth hereof, and no more, payable in cash, quarterly, on the first days of January, April, July and October in each year. In case Second Preferred Stock of more than one series is outstanding, the Corporation, in making any dividend payment upon the Second Preferred Stock, shall make dividend payments ratably upon all outstanding shares of Second Preferred Stock of all series in proportion to the amount of dividends accrued thereon to the date of such dividend payment. If dividends on any shares of Second Preferred Stock shall be in arrears, the holders thereof shall not be entitled to any interest, or sum of money in lieu of interest, thereon.

13. Subject to the limitations set forth in Section 7 of this Article Fourth, the Corporation at the option of the Board of Directors, may redeem at any time, or from time to time, any series of Second Preferred Stock or any part of any series, at $100 per share, plus accrued dividends thereon to the date fixed for redemption, plus a premium in the amount, if any, fixed with respect to such series in accordance with Section 11 of this Article Fourth (the total amount per share so payable upon any redemption of Second Preferred Stock being herein referred to as the "redemption price"); provided, however, that not less than 30 days previous to the date fixed for redemption a notice of the time and place thereof shall be given

to the holders of record of the shares of Second Preferred Stock so to be redeemed, by mailing a copy of such notice to such holders at their respective addresses as the same appear upon the books of the Corporation. In case of redemption of less than all of the outstanding Second Preferred Stock of any one series, such redemption shall be made pro rata, or the shares to be redeemed shall be chosen by lot, in such manner as the Board of Directors may determine.

At any time after notice of redemption has been given in the manner herein prescribed, or after the Corporation shall have delivered to any bank or trust company having its principal office in the Borough of Manhattan, City and State of New York, or in the City of Tulsa, State of Oklahoma, and having a capital, surplus and undivided profits of at least $5,000,000, an instrument in writing irrevocably authorizing such bank or trust company to give notice of redemption of all the outstanding Second Preferred Stock of any one or more series in the name of the Corporation and in the manner herein prescribed, the Corporation may deposit the amount of the aggregate redemption price with any such bank or trust company named in such notice, in trust for the holders of the shares so to be redeemed, payable on the date fixed for redemption as aforesaid and in the amounts aforesaid to the respective order of such holders upon endorsement to the Corporation or otherwise, as may be required, and upon surrender of the certificates for such shares. Upon deposit of the

aggregate redemption price as aforesaid, or if no such deposit is made, upon said date fixed for redemption (unless the Corporation shall default in making payment of the redemption price as set forth in said notice) such holders shall cease to be stockholders with respect to said shares and shall be entitled only to such conversion or exchange rights (if any) on or before the date fixed for redemption as may be provided with respect to such shares or to receive the redemption price on the date fixed for redemption as aforesaid, from such bank or trust company or from the Corporation, without interest thereon, upon endorsement, if required, and the surrender of the certificates for such shares, as aforesaid; provided that any funds so deposited by the Corporation and unclaimed at the end of 6 years from the date fixed for such redemption shall be repaid to the Corporation upon its request, after which repayment the holders of such shares so called for redemption shall look only to the Corporation for payment of the redemption price thereof. Any funds so deposited which shall not be required for such redemption because of the exercise, subsequent to the date of such deposit, of any right, conversion or otherwise, shall be returned to the Corporation forthwith. Any interest accrued on any funds so deposited shall belong to the Corporation and shall be paid to it from time to time.

Subject to the provisions hereof, the Board of Directors shall have authority to prescribe the manner in which Second Preferred Stock shall be

redeemed from time to time. No shares of Second Preferred Stock which shall have been redeemed or which shall have been purchased by the application of capital or otherwise retired pursuant to the provisions of the General Corporation Law of the State of Delaware shall reissued or resold.

14. Upon any dissolution, liquidation or winding up of the Corporation, subject to the prior rights of the Prior Preferred Stock, the holders of Second Preferred Stock of each series shall be entitled, before any distribution or payment is made to the holders of any class of stock ranking junior to the Second Preferred Stock, to be paid in cash $100 per share, plus accrued dividends thereon to the date of payment, plus, if dissolution, liquidation or winding up shall be voluntary, a premium in the amount, if any, fixed with respect to such series in accordance with Section 11 of this Article Fourth, and no more. In case the net assets of the Corporation remaining after the holders of the Prior Preferred Stock shall have been paid the full amounts to which they are entitled are insufficient to pay the holders of all outstanding shares of Second Preferred Stock of all series the full amounts to which they are respectively entitled, all of such remaining net assets shall be distributed ratably to the holders of all outstanding shares of Second Preferred Stock of all series in proportion to the amounts to which they are respectively entitled.

15. Except as otherwise required by law and subject to the provisions of Section 16 of this

Article Fourth, no holder of Second Preferred Stock shall have any right to vote for the election of directors or for any other purpose; provided, however, that if and whenever dividends on any series of the Second Preferred Stock shall be in arrears and such arrears shall aggregate an amount at least equal to 6 quarterly dividends upon such series, then and in such event and until such right shall cease as hereinafter provided, the holders of the outstanding Second Preferred Stock shall be entitled, at all elections of directors, voting separately as a class, to elect 2 members of the Board of Directors; provided further, however, that in case a majority of the outstanding Second Preferred Stock shall not be present in person or represented by proxy at any meeting at which the holders of the Second Preferred Stock shall be entitled to vote for the election of directors, then the holders of the Second Preferred Stock so present or represented shall be entitled, voting concurrently with the holders of the Common Stock and not a separate class, to vote for the election of directors. Whenever all arrears of dividends on the Second Preferred Stock shall have been paid and dividends thereon for the current quarterly dividend period shall have been paid or declared and provided for, then the right of the holders of the Second Preferred Stock to vote as provided in this Section 15 at all elections of directors shall cease, but subject always to the same provisions for the vesting of such voting rights in the case of any such future arrearages in dividends.

In any case in which the holders of the Second Preferred Stock shall be entitled to vote pursuant to the provisions of this Section 15, or of Section 16, of this Article Fourth or pursuant to law, each holder of Second Preferred Stock shall be entitled to one vote for each share thereof held.

16 (a). So long as any shares of Second Preferred Stock are outstanding, the consent of the holders of at least a majority of the outstanding shares of Second Preferred Stock, given in person or by proxy, either in writing or at a meeting called for that purpose, at which the holders [95] of the Second Preferred Stock shall vote separately as a class, shall be necessary for effecting or validating any one or more of the following:

(1) The authorization of any additional class of stock ranking prior to or on a parity with the Second Preferred Stock, or the increase in the authorized amount of the Second Preferred Stock or of any class of stock ranking prior to or on a parity with the Second Preferred Stock, or the authorization or increase in the authorized amount of any class of stock or obligation convertible into or evidencing the right to purchase any stock of any class ranking prior to or on a parity with the Second Preferred Stock;

(2) The amendment, alteration or repeal of any of the provisions of the Certificate of Incorporation of the Corporation or any amendment thereto or any other certificate filed pursuant to law which would adversely affect

any of the rights or preferences of outstanding shares of Second Preferred Stock; provided, however, that if any such amendment, alteration or repeal would adversely affect the rights or preferences of outstanding shares of Second Preferred Stock of any particular series without correspondingly affecting the rights or preferences of outstanding shares of all series, then like consent by the holders of at least a majority of the shares of Second Preferred Stock of that particular series at the time outstanding shall also be necessary for effecting or validating any such amendment, alteration or repeal;

(3) The voluntary dissolution, liquidation or winding up of the Corporation, or the sale, lease or conveyance by the Corporation (except to a Wholly-Owned Subsidiary) of all or substantially all of its property or business;

(4) The merger or consolidation of the Corporation with or into any other corporation unless (A) the corporation resulting from or surviving such merger or consolidation will have after such merger or consolidation no class of stock and no other securities, either authorized or outstanding, ranking prior to or on a parity with the Second Preferred Stock (or the stock, if any, issued to holders of **Second Preferred** Stock in lieu thereof in connection with such merger or consolidation) except the same number of shares of stock and

the same amount of other securities with the same rights and preferences as the stock and securities of the Corporation, respectively, authorized and outstanding immediately preceding such merger or consolidation, and (B) each holder of Second Preferred Stock immediately preceding such merger or consolidation shall receive in connection with such merger or consolidation the same number of shares, with the same rights and preferences, of the resulting or surviving corporation;

(5) The sale, lease or conveyance by any Subsidiary (except to the Corporation or a Wholly-Owned Subsidiary) of all or substantially all of its property or business;

(6) The merger or consolidation of any Subsidiary with or into any other corporation except the Corporation or a Wholly-Owned Subsidiary;

(7) The giving by the Corporation or any Subsidiary of any guaranty or similar obligation for the payment of any indebtedness of any other corporation or person or persons or for the payment of any amounts with respect to the stock of any other corporation; provided, however, that this provision shall not prevent the Corporation or any Subsidiary, without such consent from (A) guaranteeing the performance of any contract, or the payment of any obligation, of a Subsidiary, or (B) guaranteeing customers' notes and trade acceptances received by the Corporation or any Sub-

sidiary in the ordinary and regular course of its business, or (C) extending, renewing or refunding any such guaranty or similar obligation;

(8) The issue or sale (except to the Corporation or a Wholly-Owned Subsidiary) by any Subsidiary of any common stock of such Subsidiary; provided, however, that this provision shall not prevent, without such consent, the issue or sale by a Subsidiary, which is not a Wholly-Owned Subsidiary, of common stock to others than the Corporation if, simultaneously with such issue or sale, there is issued or sold to the Corporation or one or more Wholly-Owned Subsidiaries common stock in an amount sufficient to maintain the proportionate equity interest and voting control of the Corporation and its Wholly-Owned Subsidiaries in the Subsidiary so issuing or selling such stock; or

(9) The sale or other disposal by the Corporation or any Subsidiary (except to the Corporation or a Wholly-Owned Subsidiary) of any obligation or stock of any other Subsidiary unless prior thereto or at the same time all of the obligations and stock of such other Subsidiary owned directly or indirectly by the Corporation and its Subsidiaries are sold or disposed of as an entirety for a consideration which shall not include capital stock of another corporation and which shall not include obligations of another corporation unless the shares of stock and obligations so sold or disposed of

shall be validly pledged, free and clear of all other liens, charges or encumbrances, as security for such obligations.

(b) So long as any shares of Second Preferred Stock are outstanding and unless

(I) Consolidated Net Income for any 12 consecutive calendar months out of the 15 calendar months next preceding the date of the proposed transaction for the purpose of which the calculation is made and the annual average of Consolidated Net Income for the 2 completed fiscal years next preceding the date of such transaction, Consolidated Net Income being increased in each case by an amount equal to the amount of interest on Fundred Debt deducted in determining such Consolidated Net Income, shall each have been at least equal to 200% of the sum of (i) the total annual interest requirements on all Consolidated Funded Debt to be outstanding after giving effect to such transaction, plus (ii) the total annual dividend requirements on all shares of Second Preferred Stock and on all shares of all other classes of stock of the Corporation ranking prior to or on a parity with the Second Preferred Stock and on all shares of all classes of stock of Subsidiaries, not owned by the Corporation or any Wholly-Owned Subsidiary, ranking prior to the common stocks of such Subsidiaries, which shares are to be outstanding after giving effect to such transaction, and

(II) Consolidated Net Tangible Assets as of any date not more than 90 days preceding the date of the proposed transaction for the purpose of which the calculation is made (adjusted, however, to give effect to such proposed transaction and the net proceeds received or the net expenditures incurred, as the case may be, by the Corporation and its Subsidiaries from the issuance, sale, acquisition or redemption of, or other dealings in, securities of the Corporation and its Subsidiaries after the date as of which Consolidated Net Tangible Assets were calculated but on or prior to the date of such proposed transaction) shall be at least equal to 133% of the sum of (i) Consolidated Funded Debt to be outstanding after giving effect to such transaction, plus (ii) the involuntary liquidation price of all outstanding shares of Second Preferred Stock and of all other classes of stock of the Corporation ranking prior to or on a parity with the Second Preferred Stock and of all shares of all classes of stock of Subsidiaries, not owned by the Corporation or any Wholly-Owned Subsidiary, ranking prior to the common stocks of such Subsidiaries, which shares are to be outstanding after giving effect to such transaction, plus (iii) the capital and stocks of Subsidiaries, not owned by the Corporation or any Wholly-Owned Subsidiary, which are to be outstanding after giving effect to such transaction, such capital and surplus being as shown by the books of such Subsidiaries,

surplus applicable to all shares of common the consent of the holders of at least a majority of the outstanding shares of Second Preferred Stock, given in person or by proxy, either in writing or at a meeting called for that purpose, at which the holders of the Second Preferred Stock shall vote separately as a class, shall necessary for effecting or validating any one or more of the following:

(1) The creation, issuance, sale or assumption by the Corporation or any Subsidiary of any Funded Debt; provided, however, that this provision shall not prevent, without such consent (A) the creation, issue and sale by the Corporation of an aggregate of not exceeding $25,000,000 principal amount of unsecured debentures and/or notes on or about the effective date of the Agreement of Merger setting forth this Article Fourth, or (B) the creation, issuance, sale or [96] assumption by the Corporation or any Subsidiary of any Funded Debt for the purpose of extending renewing or refunding at least an approximately equal aggregate principal amount of Funded Debt of the Corporation or such Subsidiary, or (C) the creation by any Subsidiary of any Funded Debt for issuance to, and the issuance and sale thereof to the Corporation or a Wholly-Owned Subsidiary, or the extending, renewing or refunding of any such Funded Debt, or (D) the creation by the Corporation or any Subsidiary of any Funded Debt secured by purchase money

mortgages or other purchase money liens on property which subsequent to the effective date of the Agreement of Merger setting forth this Article Fourth, may be acquired by the Corporation or any Subsidiary, or the assumption by the Corporation or any Subsidiary of Funded Debt secured by mortgages or other liens existing on such property at the time of acquisition, provided that such Funded Debt shall not exceed two-thirds of the cost or fair market value (as determined in good faith by the Board of Directors of the Corporation) of such property at the time of acquisition, whichever is less, or the extending, renewing or refunding of any such Funded Debt, mortgage or other lien;

(2) The issuance by the Corporation of any authorized Second Preferred Stock in excess of the number of shares issued on the day of the effective date of the Agreement of Merger setting forth this Article Fourth or of any shares of any class of stock ranking prior to or on a parity with the Second Preferred Stock or of any class of stock or obligation convertible into or evidencing the right to purchase any stock of any class ranking prior to or on a parity with the Second Preferred Stock; or

(3) The issuance by any Subsidiary (except to the Corporation or a Wholly-Owned Subsidiary) of any shares of any class of stock of such Subsidiary ranking prior to the common stock of such Subsidiary.

17. (a) In no event, so long as any of the Second Preferred Stock shall be outstanding, shall any dividend whatsoever, whether in cash, stock or otherwise, be declared or paid, or any distribution be made, on any stock of the Corporation of a class ranking junior to the Second Preferred Stock, nor shall any shares of any such junior class of stock be purchased by the Corporation or by a Subsidiary or be redeemed by the Corporation, nor shall any moneys be paid to or set aside or made available for a purchase fund or sinking fund for the purchase or redemption of any shares of any such junior class of stock, unless

(1) all dividends on all outstanding shares of Second Preferred Stock of all series for all past dividend periods shall have been paid and the full dividends for the then current quarterly dividend period shall have been paid or declared and provided for, and

(2) the Corporation shall have paid or set aside all amounts, if any, theretofore required to be paid or set aside as and for all purchase funds and sinking funds, if any, for the shares of Second Preferred Stock of all series for the then current fiscal year, and all defaults, if any, in complying with any such purchase fund and sinking fund requirements in respect of previous fiscal years shall have been made good.

(b) In no event, so long as any Second Preferred Stock shall be outstanding, shall any dividend, other

than a dividend payable in stock of the Corporation of a class ranking junior to the Second Preferred Stock, be declared or paid, or any distribution be made, on any such junior class of stock, nor shall any shares of any such junior class of stock be purchased by the Corporation or by a Subsidiary or be redeemed by the Corporation, nor shall any moneys be paid to or set aside or made available for a purchase fund or sinking fund for the purchase or redemption of any shares of any such junior class of stock, except to the extent that the sum of

(1) Consolidated Net Income subsequent to December 31, 1946, plus

(2) $5,000,000, plus

(3) the aggregate net proceeds received by the Corporation from the issue and sale on or subsequent to the effective date of the Agreement of Merger setting forth this Article Fourth of shares of stock of the Corporation of any class ranking junior to the Second Preferred Stock, which net proceeds, to the extent that any thereof consist of property, rather than cash, shall be taken at the fair value of such property as determined by the Board of Directors of the Corporation, plus

(4) the aggregate net proceeds received by the Corporation from the issue and sale of any Funded Debt or any shares of Second Preferred Stock or stock of any class ranking prior to or on a parity with the Second Preferred Stock, which subsequent to the effective

date of the Agreement of Merger setting forth this Article Fourth may have been converted into shares of stock of the Corporation of any class ranking junior to the Second Preferred Stock, which net proceeds, to the extent that any thereof consist of property, rather than cash, shall be taken at the fail value of such property as determined by the Board of Directors of the Corporation,

shall exceed the sum of

(1) the aggregate amount of dividends (except dividends payable in shares of stock of the Corporation of a class ranking junior to the Second Preferred Stock) paid or declared and distributions (not including amounts applied to the purchase or redemption of shares of any stock) made by the Corporation subsequent to December 31, 1946, plus

(2) the aggregate amount expended by the Corporation and its Subsidiaries subsequent to the effective date of the Agreement of Merger setting forth this Article Fourth for the purpose of acquiring or redeeming shares of stock of the Corporation of any class ranking junior to the Second Preferred Stock.

18. Any purchase fund or sinking fund provided for the purchase or redemption of Second Preferred Stock of any series may provide for the purchase or redemption of stock of such series and of any other series of Second Preferred Stock created thereafter.

No shares of Second Preferred Stock which shall have been purchased or redeemed through the operation of any purchase fund or sinking fund, or for which credit against any purchase fund or sinking fund requirement shall have been taken, shall be applied against any subsequent purchase fund or sinking fund requirement or reissued or resold.

19. In case Second Preferred Stock of any series shall be convertible into or exchangeable for stock of any other series or class or other securities, no shares of Second Preferred Stock of such series which shall have been so converted or exchanged shall be reissued or resold.

Common Stock

20. Subject to the prior rights of the Prior Preferred Stock and the Second Preferred Stock and to the limitations set forth in Sections 7 and 17 of this Article Fourth, dividends may be paid upon the Common Stock as and when declared by the Board of Directors out of funds legally available for the payment of dividends.

21. Upon any dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, after the holders of the Prior Preferred Stock and the Second Preferred Stock of each series shall have been paid the full amounts to which they are respectively entitled, the remaining net assets of the Corporation shall be distributed ratably to the holders of the Common Stock.

22. Except as otherwise expressly provided in Sections 5 and 6 of this Article Fourth with respect to the Prior Preferred Stock and in Sections 15 and 16 of this Article Fourth with respect to the Second Preferred Stock and except as otherwise may be required by law, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes, each holder of Common Stock being entitled to one vote for each share thereof held. [97]

Definitions

23. For the purposes of this Article Fourth:

(a) The terms "accrued dividends," "dividends accrued," "dividends in arrears" and similar terms shall mean, in respect of each share of Prior Preferred Stock or Second Preferred Stock of any particular series, an amount equal to simple interest on the sum of $100 at an annual rate equal to the dividend rate fixed with respect to such series from the date on which dividends on such share became cumulative to the date on which dividends are stated to be accrued, less the aggregate amount of dividends paid thereon.

(b) The term "Consolidated Balance Sheet" shall mean a balance sheet consolidating the accounts of the Corporation and its Subsidiaries prepared in accordance with generally accepted principles of accounting.

(c) The term "Consolidated Current Liabilities" shall mean the aggregate of such of the following

as would appear on the liability side of a Consolidated Balance Sheet:

(1) any and all loans, accounts, bills, notes, acceptances, bonds, debentures or other obligations of any character payable on demand or maturing in twelve months or less than twelve months after the particular time as of which the calculation is made;

(2) dividends declared but not paid (other than dividends payable in shares of stock);

(3) the aggregate amount of all accrued salaries, wages, interests, rents, royalties and other expenses and all estimated and accrued taxes (including, but without limitation, income, capital stock and excess profits taxes);

(4) any reserves carried by the Corporation or its Subsidiaries for contingent current liabilities; and

(5) such other liabilities as may be properly included as "current" in accordance with generally accepted principles of accounting;

provided that no obligations of any character shall for any purpose be deemed to be part of Consolidated Current Liabilities if moneys sufficient to pay and discharge such liabilities in full (either on the date of maturity expressed therein or on such earlier date as such obligations may be redeemed pursuant to the provisions thereof) shall have been deposited with the proper depositary or with a trustee in trust for the payment thereof and such

moneys shall not be included on the asset side of such Consolidated Balance Sheet.

(d) The term "Consolidated Funded Debt" shall mean all Funded Debt which would appear on the liability side of a Consolidated Balance Sheet.

(e) The term "Consolidated Net Income" shall mean the balance remaining after deducting from the consolidated earnings and other income and profits of the Corporation and its Subsidiaries all expenses and charges of every proper character, including interest, amortization of debt discount and expense, taxes, reasonable provision for depreciation, amounts appropriated under any plan of the Corporation or any Subsidiary for extra compensation for, or pension of, officers and employees, provision for net profits applicable to minority interests in Subsidiaries and proper reserves determined in good faith by the Board of Directors of the Corporation in its discretion, all based upon a statement of income and profit and loss consolidating the accounts of the Corporation and its Subsidiaries prepared in accordance with generally accepted principle of accounting; provided, however, that for the purposes of clause I of paragraph (b) of Section 6, and clause I of paragraph (b) of Section 16, of this Article Fourth, the term "Consolidated Net Income" shall include (1) in the case of any corporation which shall have been merged into or consolidated with the Corporation or all or substantially all of the assets of which shall have been acquired by the Corporation during any period for which Consolidated Net Income is

being calculated, the net income of such Corporation, determined in accordance with the foregoing principles, for the portion of such period prior to the date of such merger, consolidation or acquisition; provided, however, that any net income of Transwestern Oil Company, which was merged into the Corporation on August 2, 1946, shall be reduced to eliminate direct net income from royalties and increased to reflect correspondingly lower income taxes, and (2) in the case of any corporation which shall have become a Subsidiary during any period for which Consolidated Net Income is being calculated, the net income of such corporation, determined in accordance with the foregoing principles, for the portion of such period prior to the date on which such corporation became a Subsidiary, adjusted to eliminate net income applicable to the stock of such corporation not owned by the Corporation and/or one or more Subsidiaries on the date of the proposed transaction for the purpose of which the calculation is made.

(f) The term "Consolidated Net Tangible Assets" shall mean the balance remaining after deducting Consolidated Current Liabilities from Consolidated Tangible Assets.

(g) The term "Consolidated Tangible Assets" shall mean the total of all assets appearing on a Consolidated Balance Sheet less the sum of

(1) the book amount of intangible assets such as good will, trademarks, brands, trade

names, patents and unamortized debt discount and expenses;

(2) any capital write-ups resulting from reappraisals (except pursuant to an appraisal as hereinafter permitted) of assets or investments subsequent to December 31, 1946, and to their acquisition by the Corporation;

(3) any reserves, other than general contingency reserves, carried by the Corporation or its Subsidiaries as non-current liabilities and not already deducted from assets; and

(4) the amount, if any, at which stock of the Corporation owned by the Corporation or by any Subsidiary appears upon the asset side of such Consolidated Balance Sheet;

provided, however, that in computing Consolidated Tangible Assets the Corporation may substitute for the aggregate of the valuations of producing oil and gas properties the fair value of such properties as determined by an appraisal thereof by such independent petroleum engineer or engineers or other independent expert or experts as the Board of Directors of the Corporation shall employ for the purpose.

(h) The term "Funded Debt" shall mean indebtedness maturing by its terms more than 12 months from the particular time as of which the calculation is made; provided, however, that for the purposes of proviso (B) of subdivision (1) of paragraph (b) of Section 6, and of proviso (B)

of subdivision (1) of paragraph (b) of Section 16, of this Article Fourth, the term "Funded Debt" as applied to indebtedness to be extended, renewed or refunded shall include indebtedness maturing by its terms more than 12 months from the date of creation thereof but which at the time of such extension, renewal or refunding matures within 12 months.

(i) The term "outstanding," when used in reference to shares of stock, shall mean issued shares, excluding shares held by the Corporation or a Subsidiary.

(j) The term "Subsidiary" shall mean any corporation of which the Corporation and/or one or more Subsidiaries own or control, directly or indirectly, more than 50% of the outstanding stock having by its terms ordinary voting power to elect a majority of the Board of Directors of such corporation, irrespective of whether or not at the time stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency.

(k) The term "Wholly-Owned Subsidiary" shall mean any Subsidiary all the shares of capital stock of which (other than qualifying shares required to be owned by directors under applicable law) shall at the time be owned or controlled, directly or indirectly, by the Corporation and/or one or more Wholly-Owned Subsidiaries and which has no Funded Debt other than (1) Funded Debt to the

Corporation or a Wholly-Owned Subsidiary and (2) indebtedness in respect [98] of purchase money mortgages or other liens of the nature referred to in proviso (D) of subdivision (1) of paragraph (b) of Section 6, and proviso (D) of subdivision (1) of paragraph (b) of Section 16, of this Article Fourth.

(l) The certificate of any firm of public accountants of recognized standing, selected by the Board of Directors, of which firm no director, officer or employee of the Corporation or of any Subsidiary is a partner, shall be conclusive evidence as to all matters embraced in the Consolidated Balance Sheet and as to the amount of Consolidated Current Liabilities, Consolidated Funded Debt, Consolidated Net Income, Consolidated Net Tangible Assets and Consolidated Tangible Assets.

(m) Any class or classes of stock of the Corporation shall be deemed to rank

(1) prior to the Prior Preferred Stock or the Second Preferred Stock, as the case may be, if the holders of such class or classes shall be entitled to the receipt of dividends or of amounts distributable upon any dissolution, liquidation or winding up, as the case may be, in preference to or with priority over the holders of the Prior Preferred Stock or the Second Preferred Stock, as the case may be;

(2) on a parity with the Prior Preferred Stock or the Second Preferred Stock, as the

case may be, whether or not the dividend rates, dividend payment dates or redemption or liquidation prices per share thereof be different from the Preferred Stock or the Second Preferred Stock, as the case may be, if the rights of holders of such class or classes to the receipt of dividends or of amounts distributable upon any dissolution, liquidation or winding up, as the case may be, shall be neither (a) in preference to or with priority over nor (b) subject or subordinate to the rights of the holders of the Prior Preferred Stock or the Second Preferred Stock, as the case may be, in respect of the receipt of dividends or of amounts distributable upon any dissolution, liquidation or winding up, as the case may be; and

(3) junior to the Prior Preferred Stock or the Second Preferred Stock, as the case may be, if the rights of the holders of such class or classes shall be subject or subordinate to the rights of the holders of the Prior Preferred Stock or the Second Preferred Stock, as the case may be, in respect of the receipt of dividends or of amounts distributable upon any dissolution, liquidation or winding up, as the case may be.

Fifth: The Corporation shall have perpetual existence.

Sixth: The private property of the stockholders of the Corporation shall not be subject to the payment of corporate debts to any extent whatsover.

Seventh: No stockholder of this Corporation shall have any preemptive or preferential right to purchase or subscribe for any stock or options or option warrants of the Corporation unissued, whether now or hereafter authorized, or acquired by the Corporation, or any bonds, notes, debentures or other obligations convertible into stock of the Corporation, nor any right of subscription to any such stock or options or option warrants, or any such bonds, notes, debentures or other obligations other than such, if any, as the Board of Directors in its discretion, from time to time, shall determine, and at such price as the Board of Directors shall fix, pursuant to the authority hereby conferred. The Board of Directors may cause to be issued the stock of the Corporation, or options, option warrants, bonds, notes, debentures, or other obligations convertible into stock, without offering such stock, options, option warrants or such bonds, notes, debentures, or other obligations, either in whole or in part, to the stockholders. The acceptance of stock of this Corporation, or dividends thereon, shall be a waiver of any preemptive or preferential right which, notwithstanding this provision, might otherwise be asserted by a stockholder of the Corporation.

Eighth: The Corporation shall be entitled to treat the person in whose name any share is registered as the owner thereof, for all purposes, and shall not be bound to recognize any equitable or other claims to, or interest in, such share on the

part of any other person, whether or not the Corporation shall have notice thereof, except as otherwise expressly provided by the statutes of the State of Delaware.

Ninth: The number of directors which shall constitute the whole Board of Directors of the Corporation shall be such as from time to time shall be fixed by, or in the manner provided in, the By-laws, but in no case shall the number be less than three. Vacancies in the Board of Directors, whether created by an increase in the number of directors or otherwise, shall be filled in the manner provided in the By-laws. The directors shall be stockholders of the Corporation.

Tenth: In furtherance and not in limitation of the powers conferred by statute, and in addition to the powers which may be conferred by the By-laws, the Board of Directors of the Corporation shall have the following powers:

1. To make, alter and amend the By-laws of the Corporation, but any by-law so made, altered or amended by the Board of Directors may be altered, amended or repealed by the stockholders.

2. From time to time to fix and determine and to vary the amount of the working capital of the Corporation, to direct and determine the use and disposition thereof, to set apart, out of any funds of the Corporation available for dividends, a reserve or reserves for any proper

purpose, and to abolish any such reserve in the manner in which it was created.

3. To designate by resolution or resolutions passed by a majority of the whole Board one or more committees, each committee to consist of two or more directors of the Corporation, which, to the extent provided in said resolution or resolutions or in the By-laws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

4. To determine from time to time whether and to what extent and at what times and places and under what conditions and regulations the accounts, books, papers and records of the Corporation, or any of them, shall be open to the inspection of stockholders; and no stockholder shall have any right to inspect any account, book, paper or record of the Corporation except as otherwise specifically provided by the laws of the State of Delaware or authorized by resolution of the Board of Directors or of the stockholders.

5. From time to time to formulate, establish, promote, and carry out, and to amend, alter, change, revise, recall, repeal, or abolish a plan or plans for the participation by all or any of the employees, including directors and officers

of this Corporation, or of any corporation, company, association, trust, or organization in which or in the welfare of which this Corporation has any interest, and those actively engaged in the conduct of this Corporation's business, in the profits, gains, or business of the Corporation or of any branch or division thereof, as part of this Corporation's legitimate expenses, and for the furnishing to such employees, directors, officers, or persons, or any of them, at this Corporation's expense, of medical services, insurance against accident, sickness or death, pensions during old age, disability or unemployment, education, housing, social services, recreation or other similar aids for their relief or general welfare, in such manner and upon such terms and conditions as the Board of Directors shall determine.

Eleventh: The Corporation may in its By-Laws confer powers additional to the foregoing (not, however, inconsistent with law) upon the Board of Directors, in addition to the powers and authorities expressly conferred upon them by statute.

Twelfth: All corporate powers of the Corporation shall be exercised by the Board of Directors except as otherwise by law or herein provided.

Thirteenth: No contract, transaction or act of the Corporation shall be affected by the fact that any director of the Corporation is in any way interested in, or connected with, any party to such contract, transaction or act, or himself is a party to

such contract, transaction or act. Any director so interested or connected may be counted in determining the existence of a quorum, at any meeting of the Board of Directors which shall authorize any such contract, transaction or act, and may vote thereat to authorize any such contract, transaction or act with like effect as if he were not so interested or connected. Every [99] director of the Corporation is hereby relieved from any disability which might otherwise prevent him from contracting with the Corporation, for the benefit of himself or any firm, corporation, company, association, trust or organization in which or with which he may be in anywise interested or connected.

Fourteenth: The stockholders and the Board of Directors may, if the By-laws so provide, hold their meetings, have an office or offices and keep the books of the Corporation (except such as are required by the laws of the State of Delaware to be kept in Delaware) within or without the State of Delaware, at such place or places as may from time to time be designated by the Board of Directors.

Fifteenth: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this Corporation

under the provisions of Section 3883 of the Revised Code of 1915 of said State, or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 43 of the General Corporation Law of the State of Delaware, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said Court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the Court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders of this Corporation, as the case may be, and also on this Corporation.

Sixteenth: The Corporation reserves the right to amend, alter, change or repeal any provision contained in its Certificate of Incorporation, or any amendment thereof, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred upon the stockholders of the Corporation are granted subject to this reservation.

Article III.

The By-laws of Sunray, as they shall exist on the effective date of this agreement, shall be and remain the By-laws of the Surviving Corporation until the same shall be altered, amended or repealed, as therein provided.

Article IV.

The outstanding shares of Common Stock of Sunray shall not be changed or converted as a result of the merger, and all shares of such stock which shall be outstanding on the effective date of this agreement (including any shares held in the treasury of Sunray) shall be and be deemed to be shares of Common Stock of the Surviving Corporation, shall remain outstanding, shall be and be deemed to be full-paid and non-assessable and shall be subject to all the provisions of this agreement.

The manner of converting the shares of each of the Constituent Corporations (other than shares of Common Stock of Sunray) into shares of the Surviving Corporation shall be as follows:

(a) Each share of old Preferred Stock of Sunray which shall be outstanding on the effective date of this agreement (including any shares held in the treasury of Sunray) and all rights in respect thereof shall thereupon forthwith be converted into 1 share of 1947 Prior Preferred Stock of the Surviving Corporation.

(b) Each share of Capital Stock of Pacific which shall be outstanding on the effective date of this agreement (except any shares held in the

treasury of Pacific or owned by any other Constituent Corporation) and all rights in respect thereof shall thereupon forthwith be converted into 7/10ths of 1 share of 1947 Prior Preferred Stock of the Surviving Corporation. Any shares of Capital Stock of Pacific held in the treasury of Pacific or owned by any other Constituent Corporation on the effective date of this agreement and all rights in respect thereof shall cease to exist, the certificates therefor shall be cancelled and no shares of stock of the Surviving Corporation shall be issued in respect thereof.

(c) Each share of Capital Stock of Mission which shall be outstanding on the effective date of this agreement (except any shares held in the treasury of Mission or owned by any other Constituent Corporation) and all rights in respect thereof shall thereupon forthwith be converted into 6 shares of Common Stock of the Surviving Corporation. Any shares of Capital Stock of Mission held in the treasury of Mission or owned by any other Constituent Corporation on the effective date of this agreement and all rights in respect thereof shall cease to exist, the certificates therefor shall be cancelled and no shares of stock of the Surviving Corporation shall be issued in respect thereof.

(d) After the effective date of this agreement, each holder of an outstanding certificate or certificates which prior thereto represented shares of stock of a Constituent Corporation

(other than shares of Common Stock of Sunray) shall surrender the same to the Surviving Corporation, and, subject to the provisions of subdivision (e) below as to fractions of shares, such holder shall be entitled upon such surrender to receive in exchange therefor a certificate or certificates representing the number of shares of stock of the Surviving Corporation into which the shares of stock of such Constituent Corporation which prior to such effective date were represented by such outstanding certificate or certificates so surrendered shall have been converted as aforesaid. Until so surrendered, each such outstanding certificate shall be deemed for all corporate purposes, other than the payment of dividends, to evidence the ownership of the shares of stock of the Surviving Corporation into which the shares of stock of the Constituent Corporation which prior to such effective date were represented thereby have been so converted. Unless and until any such outstanding certificate shall be so surrendered, no dividend payable to holders of records of stock of the Surviving Corporation as of any date subsequent to the effective date of this agreement shall be paid to the holder of such outstanding certificate with respect to the number of shares of stock of the Surviving Corporation into which the shares of stock of such Constituent Corporation which prior to such

effective date were represented thereby have been converted, but upon such surrender there shall be paid to the record holder of the certificate for stock of the Surviving Corporation issued in exchange therefor the amount of dividends which has theretofore become payable with respect to the number of full shares of stock of the Surviving Corporation represented by the certificate issued upon such surrender and exchange, plus, in the case of the surrender of any outstanding certificate which prior to the effective date of this agreement represented shares of old Preferred Stock of Sunray, the amount of dividends accrued and unpaid on such shares to such effective date.

(e) No certificates for fractional shares of 1947 Prior Preferred Stock of the Surviving Corporation shall be issued upon any surrender and exchange of certificates which prior to the effective date of this agreement represented shares of Capital Stock of Pacific, but in lieu thereof, if in any case the number of shares of 1947 Prior Preferred Stock of the Surviving Corporation into which the shares of capital stock of Pacific which prior to the effective date of this agreement were represented by a certificate or certificates surrendered as aforesaid have been converted shall include a fraction of a share, the Surviving Corporation shall at its election (1) pay to the person entitled thereto a sum in cash determined by multiplying the sum of $100 by such fraction, or (2) execute

and deliver a non-voting and non-dividend bearing scrip certificate (exchangeable within such period as may be fixed by the Board of Directors, upon surrender thereof with other scrip certificates aggregating one or more full shares, for stock certificates for the number of full shares represented) for such fraction of a share, in such form and containing such terms and conditions as the Board of Directors may approve. [100]

Article VI.

1. On the effective date of this agreement, the Surviving Corporation shall, without other transfer, succeed to and possess all the rights, privileges, powers, franchises and immunities, as well of a public as of a private nature, and be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations, and all and singular the rights, privileges, powers, franchises and immunities of each of the Constituent Corporations, and all property, real, personal and mixed, and all debts due to either of the Constituent Corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of the Constituent Corporations, shall be vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest, shall be thereafter as effectually the property of the Surviving Corporation as they were of the several and respective Constituent Corpora-

tions, and the title to any real estate, vested by deed or otherwise, under the laws of the State of Delaware or of the State of Nevada or of any of the other states of the United States, in either of the Constituent Corporations, shall not revert or be in any way impaired by reason of the merger or the General Corporation Law of the State of Delaware or the General Corporation Law of the State of Nevada; provided, however, that all rights of creditors and all liens upon any property of each of the Constituent Corporations shall be preserved unimpaired, limited in lien to the property affected by such liens at the time of such merger, and all debts, liabilities and duties of the respective Constituent Corporations shall thenceforth attach to the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. The Constituent Corporations hereby respectively agree that from time to time, as and when requested by the Surviving Corporation or by its successors or assigns, they will execute and deliver all such deeds and other instruments and will take or cause to be taken such further or other action as the Surviving Corporation may deem necessary or desirable in order to vest or perfect in, or confirm of record or otherwise, to, the Surviving Corporation title to and possession of all said property, rights, privileges, powers and franchises and otherwise to carry out the purposes of this agreement.

2. The Surviving Corporation shall pay all the expenses of carrying this agreement into effect and of accomplishing the merger.

3. This agreement shall be submitted to the stockholders of each of the Constituent Corporations as provided by law, and it shall take effect and be deemed and be taken to be the agreement and act of merger of said corporations upon the adoption thereof by the stockholders of each of the Constituent Corporations in accordance with the requirements of the General Corporation Law of the State of Delaware and the General Corporation Law of the State of Nevada and upon the execution, filing and recording of such documents and the doing of such acts and things as shall be required for accomplishing the merger by the General Corporation Law of the State of Delaware and the General Corporation Law of the State of Nevada.

4. Anything herein or elsewhere to the contrary notwithstanding, (a) this agreement shall not become effective and shall be null and void for all purposes if Sunray shall not have acquired, prior to or simultaneously with the time at which this agreement is otherwise to become effective, and shall not then be the owner and holder of, the 699,422 shares of Capital Stock of Pacific now owned by Thomas A. J. Dockweiler and George Franklin Getty, II, as trustees under a Declaration of Trust dated December 31, 1934, naming Sarah C. Getty as trustor and J. Paul Getty as original trustee, and the 470,027 shares of Capital Stock of Pacific

now owned by J. Paul Getty, individually and as testamentary trustee under the Decree of Partial Liquidation of the Estate of Sarah C. Getty, deceased, and (b) this agreement may be abandoned (1) by any of the Constituent Corporations at any time prior to its adoption by the stockholders of all of the Constituent Corporations, or (2) by mutual consent of the Constituent Corporations at any time prior to its effective date.

5. The Surviving Corporation agrees that it may be served with process in the State of Nevada in any proceeding for enforcement of any obligation of Mission, including any amount fixed by appraisers or the District Court pursuant to the provisions of Section 41 of the General Corporation Law of the State of Nevada, and hereby irrevocably appoints the Secretary of State of the State of Nevada as its agent to accept service of process in any action for the enforcement of payment of any such obligation or any amount fixed by appraisers, as aforesaid. The address to which a copy of such process shall be mailed by said Secretary of State is: Sunray Oil Corporation, Tulsa, Oklahoma.

6. For the convenience of the parties and to facilitate the filing or recording of this agreement, any number of counterparts thereof may be executed, and each such executed counterpart shall be deemed to be an original instrument.

In Witness Whereof, the Constituent Corporations have caused this agreement to be signed in their respective corporate names by their respective Presidents or Vice-Presidents and their corporate seals to be hereunto affixed and attested by their respective Secretaries or Assistant Secretaries, and a majority of the directors of each of the Constituent Corporations have hereunto set their hands, all as of the day and year first above written.

[Seal] SUNRAY OIL
CORPORATION,
By C. H. WRIGHT,
President.

Attest:
W. D. FORSTER,
Secretary.

C. H. WRIGHT,
A. A. SEELIGSON,
GLENN J. SMITH,
ALFRED L. ROSE,
THOMAS L. BOWERS,
F. B. PARRIOTT,
PAUL E. TALIAFERRO,
F. L. MARTIN,
W. D. FORSTER,
EDWARD HOWELL,
A majority of the directors of
Sunray Oil Corporation.

[Seal] PACIFIC WESTERN OIL CORPORATION,
By D. T. STAPLES,
President.

Attest:
CHARLES F. KRUG,
Secretary.

D. T. STAPLES,
FRANK A. PAGET,
EDWARD GROTH,
FERO WILLIAMS,
RULOFF E. CUTTEN,
A majority of the directors of Pacific Western Oil Corporation. [101]

[Seal] MISSION CORPORATION,
By D. T. STAPLES,
President.

Attest:
ROBERT Z. HAWKINS,
Secretary.

ARTHUR M. BOAL,
D. T. STAPLES,
FERO WILLIAMS,
EMIL KLUTH,
A majority of the directors of Mission Corporation.

"EXHIBIT C"

Whereas, there has been presented to this Board of Directors this morning for the first time a proposed Merger Agreement between this corporation and the Sunray and Pacific Western Oil Corporations, and various other documents and material pertaining to such proposed Merger, and

Whereas, this Board has heretofore taken no action authorizing or designating any person or persons to negotiate the aforesaid Agreement of Merger and the terms and conditions included therein, or to prepare the proxy material and other documents and material pertaining to such Merger which have been presented at this meeting for the approval of this Board, and

Whereas, the members of this Board have not had sufficient time to read and consider the aforesaid documents and further, do not have a reliable opinion of distinterested counsel regarding the legality of the proposed Merger Agreement or any reliable information to enable it to consider the fairness of the terms and conditions of said Merger Agreement, and

Whereas, it is necessary for the protection of the interests of all of the Stockholders of this corporation that this Board have an opinion of reliable disinterested counsel regarding the legality of the proposed Merger Agreement and be fully informed regarding all the facts and circumstances affecting the proposed Merger Agreement and the fairness of the terms and conditions thereof.

Now, Therefore Be It Resolved, that this meeting be recessed until eleven a.m. on the 15th day of November, 1947, and, further [102]

Resolved, that this Board designate a Committee to retain reliable disinterested counsel to render a written opinion regarding the legality of the said Merger Agreement, investigate all the facts and circumstances relating to the proposed Merger Agreement, secure all available information relating to the fairness of the terms and conditions contained therein including a common yardstick appraisal of the values of the constituent corporations and the Skelly Oil Company and deliver to each of the members of this Board a copy of the aforesaid legal opinion and a written report of the results of their investigation including the aforesaid available information relating to the fairness of the terms and conditions of said Merger Agreement, together with their recommendations regarding the acceptance of the terms and conditions of said Merger Agreement or the modification of such terms and conditions, as the case may be, for the consideration and action of this Board at the continuation of the meeting of this board at eleven o'clock on November 15th, 1947. [103]

"EXHIBIT D"

Whereas, it appears that the merger agreement and proxy statement have been prepared by attorneys for Sunray and Eastman-Dillon in consultation with attorneys for The Getty Interests, and

Whereas, said merger agreement and proxy statement were first submitted to counsel for Mission on Friday, October 17th, 1947, and it is apparent that counsel for Mission has not had sufficient time to familiarize himself with all of the terms and conditions of said merger agreement and proxy statement in order to advise the directors of Mission with respect to the legality of the merger, the accuracy and sufficiency of the proxy statement and the liability of the directors of Mission.

Be It Resolved that further consideration of the proposed merger agreement be postponed until Monday, October 20, 1947, at 10:00 o'clock A.M. and that the meeting recess until that time. [104]

State of California,
County of Los Angeles—ss.

William G. Skelly, of lawful age, being first duly sworn, on oath states: That he is the plaintiff in this action; that he has read the within and foregoing Amended Complaint and knows the contents thereof, and that the matters, facts and things therein set out are true, of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

/s/ WILLIAM G. SKELLY.

Subscribed and sworn to before me this 17th day of November, 1947.

ETHEL MAHAFFEY,
Notary Public, Los Angeles County, California.

My Commission Expires May 14, 1948.

Service, by copy, of the foregoing Amended Complaint is hereby admitted this 18th day of November, 1947.

/s/ L. D. SUMMERFIELD,
Attorney for Defendant.

[Endorsed]: Filed Nov. 18, 1947. [105]

[Title of District Court and Cause.]

Monday, October 20, 1947, at 10:00 o'clock A.M.

ANSWER TO AMENDED COMPLAINT

Mission Corporation, by its attorneys, Hawkins, Rhodes & Hawkins, Lester D. Summerfield, Esq., and Tompkins, Boal & Tompkins, answering the amended complaint herein, respectfully alleges on information and belief as follows:

First: It denies each and every allegation contained in Paragraph Third of the complaint.

Second: It denies each and every allegation contained in Paragraph Fourth of the complaint except that it admits that the plaintiff is owner of record of 2,000 shares of the defendant and denies knowledge or information sufficient to form the belief as to the allegation of beneficial ownership of 14,000 shares.

Third: It denies each and every allegation contained in Paragraph Sixth of the complaint except that it admits that J. Paul Getty, individually and as Trustee, and Thomas A. J. Dockweiler and

George Franklin Getty 2nd [106] as Trustees, owned 1,169,449 shares of the common capital stock of Pacific Western Oil Corporation out of a total issued and outstanding of 1,371,730, and in the annual meetings of the defendant Pacific Western Oil Corporation voted its stock for the election of the directors of the defendant.

Fourth: It denies each and every allegation contained in Paragraph Seventh of the complaint, except that it admits that Pacific Western Oil Corporation is the owner and holder of record of 641,808 shares of the common stock of the defendant, out of a total issued and outstanding of 1,374,145 shares, and that the remaining shares of stock are owned by upwards of 30,000 different stockholders.

Fifth: It denies each and every allegation contained in Paragraph Eighth of the complaint except that it admits that J. Paul Getty, individually and as Trustee, and Thomas A. J. Dockweiler and George Franklin Getty, 2nd, as Trustees, entered into an agreement with Sunray Oil Corporation under date of October 4, 1947, a copy of which was annexed to the complaint under Exhibit "A." It is admitted that on October 4, 1947 the market price of Pacific Western Oil Corporation common stock on the New York Stock Exchange was $52 per share and admits that its book value on September 30th was approximately $21 per share.

Sixth: It denies each and every allegation contained in Paragraph Ninth of the complaint, except

that it admits that Exhibit "B" attached to the complaint is a copy of the proposed agreement of merger between Pacific Western Oil Corporation, the defendant, and Sunray Oil Corporation, and reference to the agreement, Exhibit "D," is made for the [107] particulars thereof.

Seventh: It denies each and every allegation contained in Paragraph Tenth of the complaint, except that it admits that at a special meeting of the Board of Directors the defendant held on October 18, 1947, the Agreement of Merger (Exhibit "B") attached to the complaint, was approved by a majority of the Board of Directors, Skelly and Hyden voting "No," and that a special meeting of the stockholders was ordered called to be held on the 6th day of December, 1947 at 10 a.m. at the principal office of the defendant, 153 North Virginia Street, Reno, Nevada, to consider and vote upon the proposed Agreement of Merger. The agreement was duly executed by a majority of the defendant's Board of Directors.

Eighth: It denies each and every allegation contained in Paragraph Twelfth of the complaint except that it admits that prior to the meeting the Board of Directors of the defendant on October 18, 1947, B. I. Graves resigned as a director and at said meeting David T. Staples was elected a director to succeed the said B. I. Graves. At the said Directors' meeting of October 18, 1947, the plaintiff was removed as President of the defendant and David T. Staples was elected President in his stead.

Ninth: It denies each and every allegation contained in Paragraph Thirteenth of the complaint, except that it admits that two resolutions attached to the complaint as Exhibits "C" and "D" were proposed by the plaintiff at the meeting of the Board of Directors on October 18, 1947 and were rejected by a majority of the Board.

Tenth: It denies each and every allegation contained in Paragraphs Fourteenth and Fifteenth of the complaint. [108]

Wherefore, defendant prays that the complaint be dismissed with costs.

HAWKINS, RHODES &
HAWKINS,
LESTER D. SUMMERFIELD,
Esq.,
TOMPKINS, BOAL &
TOMPKINS,
Attorneys for Defendant.
/s/ LESTER D. SUMMERFIELD,
/s/ ROBERT Z. HAWKINS,
/s/ BRYCE RHODES,
/s/ ARTHUR M. BOAL,
Of Counsel. [109]

State of Nevada,
County of Washoe—ss.

David T. Staples, being first duly sworn, deposes and says: That he is the President of Mission Corporation, defendant in the above-entitled action; that he has read the foregoing Answer to Amended

Complaint and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on information and belief and he believes those matters to be true.

/s/ DAVID T. STAPLES.

Subscribed and Sworn to before me this 20th day of November, 1947.

[Seal] RUTH T. QUIVEY,
Notary Public in and for the County of Washoe, State of Nevada.

Service by copy admitted November 20, 1947.

/s/ WM. WOODBURN,
One of Attorneys for
Plaintiff.

[Endorsed]: Filed Nov. 20, 1947. [110]

[Title of District Court and Cause.]

INTERROGATORIES AND ANSWERS TO PLAINTIFF'S INTERROGATORIES

Comes Now the defendant Mission Corporation, a corporation, by D. T. Staples, its President, and answers plaintiff's interrogatories heretofore propounded as follows:

1-Q. Does defendant have issued and outstanding any shares of capital stock other than common stock?

A. No. In this connection I attach as an exhibit to these answers a Proxy Statement of Mission Cor-

poration which I understand has been mailed to each stockholder of Mission Corporation, and which contains complete and detailed answers to this question and many of the following questions. [117]

2-Q. Not including shares in defendant's treasury, how many shares of defendant's common capital stock are issued and outstanding?

A. 1,374,145.

3-Q. How many shares of defendant's common capital stock are owned and held by Pacific Western Oil Corporation, a Delaware Corporation?

A. 641,808.

4-Q. Approximately how many persons, firms and corporations are the owners and holders of shares of defendant's capital stock?

A. Approximately 29,300.

5-Q. How many shares of the common capital stock of Tide Water Associated Oil Company are owned by defendant? A. 1,345,593.

6-Q. How many shares of the common capital stock of Skelly Oil Company, a Delaware corporation, are owned by defendant? A. 582,657.

7-Q. How many shares of the common capital stock of Skelly Oil Company are issued and outstanding, exclusive of shares held in its treasury?

A. 981,348.6.

8-Q. How many shares of capital stock does Pacific Western Oil Corporation, a Delaware corporation, have issued and outstanding, exclusive of Treasury stock? A. 1,371,730.

9-Q. How many shares of Pacific Western Oil Corporation stock are owned by (a) Thomas A. J.

Dockweiler and George Franklin Getty II, as Trustees, and (b) J. Paul Getty, individually and as trustee?

A. (a) By Trustees, 699,422.

(b) J. Paul Getty, individually and as Trustee, 470,027.

10-Q. When did Pacific Western Oil Corporation last hold a stockholders meeting for the election of directors? A. April 17, 1947.

11-Q. At said stockholders' meeting how many of the shares of Pacific Western Oil Corporation owned by Thomas A. J. Dockweiler and George Franklin Getty II as trustees, and J. Paul Getty, individually and as trustee, were voted for the election of directors, and for whose election as directors was such stock voted?

A. At the time of said meeting the shares of stock belonging to the Sarah C. Getty Trust stood in the [119] name of Thomas A. J. Dockweiler as Trustee and none stood in the name of Thomas A. J. Dockweiler and George Franklin Getty II as Trustees. Thomas A. J. Dockweiler as Trustee by proxy voted all of the 699,422 shares belonging to the Sarah C. Getty Trust, and J. Paul Getty individually by proxy voted 468,327 shares, and did not vote any of the stock held by him as trustee. Said votes were all cast for the following directors:

Rullof E. Cutten, Lloyd S. Gilmour, Edward Groth, Frank A. Paget, D. T. Staples.

12-Q. What was the total number of shares voted at said meeting? A. 1,169,949.

13-Q. Please state the names of all persons elected directors of Pacific Western Oil Corporation at said stockholders' meeting.

A. Ruloff E. Cutten, Lloyd S. Gilmour, Edward Groth, Frank A. Paget, D. T. Staples.

14-Q. When did Mission Corporation last hold a stockholders' meeting for election of directors?

A. May 8, 1947.

15-Q. Did Pacific Western Oil Corporation, prior to such stockholders' meeting, execute a proxy for the voting of its stock of defendant for election of defendant's directors? [120]

A. Yes.

16-Q. If the answer to the last preceding question is in the affirmative, then state (a) the person or persons named as proxies, or to vote said stock and (b) what instructions were given as to the voting of said stock for directors of Mission Corporation.

A. (a) The person or persons named as proxies, or to vote said stock—B. I. Graves, Robert Z. Hawkins and William G. Skelly.

(b) What instructions were given as to the voting of said stock for directors of Mission Corporation—None. The Mission Proxy Statements, however, which had been prepared and sent to stockholders contained the following statement:

> "The following persons have been designated by the Board of Directors of the Corporation, as nominees for election as directors, and it is the intention of the persons named in the

enclosed form of proxy to vote such proxy for the election of such nominees, at the Annual Meeting of Stockholders to be held May 8, 1947, to hold office as such directors until their respective successors are duly elected and have qualified, or until the next annual meeting of stockholders, whichever shall be first:

Arthur M. Boal
Thomas A. J. Dockweiler
B. I. Graves
Arch H. Hyden
Emil Kluth
W. G. Skelly
Fero Williams"

17-Q. Was the stock of defendant owned by Pacific Western Oil Corporation voted for directors at the last stockholders' meeting of Mission Corporation at which directors were elected?

A. Yes.

18-Q. If you answer the last preceding question in the affirmative, name the persons for whose election as directors such stock was voted? [121]

A. Arthur M. Boal, Thomas A. J. Dockweiler, B. I. Graves, Arch H. Hyden, Emil Kluth, W. G. Skelly, Fero Williams.

19-Q. State the number of shares for which defendant's management held proxies, the names of the persons constituting such management, and the total number of shares voted for election of directors at said meeting?

A. 1,044,599 voted by proxy; 400 were voted individually; total 1,044,999. If I understand the

law correctly, the management of Mission Corporation was its Board of Directors which at that time consisted of Arthur M. Boal, Thomas A. J. Dockweiler, B. I. Graves, Arch H. Hyden, Emil Kluth, William G. Skelly and Fero Williams who were all re-elected at said meeting as directors of Mission Corporation. All the proxies which were voted were given to B. I. Graves, Robert Z. Hawkins and William G. Skelly. Messrs. Graves and Skelly were directors of Mission Corporation, and Hawkins was the secretary of the company and its statutory agent in Nevada.

20-Q. Please state the names of all directors of defendant elected at said meeting.

A. Arthur M. Boal, Thomas A. J. Dockweiler, B. I. Graves, Arch H. Hyden, Emil Kluth, W. G. Skelly, Fero Williams.

21-Q. Was D. T. Staples an officer or director of defendant at any time in the year 1947 prior to October 18, 1947? A. No.

22-Q. Please state (a) the date D. T. Staples was first elected as a director of defendant (b) the date he entered upon the duties of that office, (c) by whom he was elected or appointed and (d) the names of the persons who voted in [122] favor of his election or appointment?

A. (a) First elected as a director on October 18, 1947. (b) Date entered upon the duties of that office—October 18, 1947. (c) By whom elected—Board of Directors. (d) Persons who voted for his election or appointment—Directors Boal, Dockweiler, Kluth and Williams. Directors Skelly and Hyden voted for George Franklin Getty II.

23-Q. Please state (a) the date D. T. Staples was elected as President of defendant, (b) the date he entered upon the duties of that office, (c) by whom he was elected or appointed, and (d) the names of the persons who voted in favor of his election or appointment?

A. (a) Date elected President—October 18, 1947. (b) Date entered upon duties—October 18, 1947. (c) By whom elected or appointed—Board of Directors. (d) Persons who voted in favor of election or appointment—Directors Boal, Dockweiler, Kluth and Williams.

24-Q. Was there a meeting of defendant's Board of Directors on October 18, 1947? A. Yes.

25-Q. Who was President of defendant at the time of convening the Directors' meeting of October 18, 1947? A. W. G. Skelly. [123]

26-Q. Was he removed from office, and if so, when? A. Yes, on that date.

27-Q. What directors, by name, voted for his removal?

A. Arthur M. Boal, Thomas A. J. Dockweiler, Emil Kluth, Fero Williams, D. T. Staples.

28-Q. At or prior to the time of his removal, had any vote been taken by the directors on any merger plan? A. No.

29-Q. Who were defendant's directors on October 18, 1947?

A. Arthur M. Boal, Thomas A. J. Dockweiler, Arch H. Hyden, Emil Kluth, W. G. Skelly, D. T. Staples, Fero Williams. B. I. Graves had prior to said date tendered his resignation to take effect

immediately. After the Board convened at its meeting of October 18, 1947, such resignation was presented to the Board and accepted by it, and D. T. Staples was elected director of the corporation to fill the vacancy caused by such resignation.

30-Q. Name all directors who were present, and all directors who were absent at said meeting.

A. All Present: Arthur M. Boal, Thomas A. J. Dockweiler, Arch H. Hyden, [124] Emil Kluth, W. G. Skelly, D. T. Staples, Fero Williams.

31-Q. Which, if any, of defendant's directors are also directors of Pacific Western Oil Corporation?

A. D. T. Staples and Fero Williams. Director Williams was elected a director of Pacific Western Oil Corporation on October 20, 1947.

32-Q. Which, if any, of defendant's directors are officers of Pacific Western Oil Corporation, and what office or offices in that corporation does each of them hold?

A. D. T. Staples, who holds the Office of President in each of said corporations; Emil Kluth, who is Vice-President of Pacific Western Oil Corporation; and Fero Williams, who is Assistant Secretary and Assistant Treasurer of Pacific Western Oil Corporation.

33-Q. Please examine "Exhibit A" to the Bill of Complaint in this case and state whether or not D. T. Staples has heretofore seen the original of a copy of that document? A. Yes.

34-Q. If the answer to the last preceding question is in the affirmative, then (a) When did he

first see it? (b) Where did he first see it? (c) Who showed it to him? [125]

A. (a) When did he first see it?—About the 4th of October, 1947. (b) Where did he first see it?—Los Angeles, California. (c) Who showed it to him?—Joseph D. Peeler.

35-Q. Is the capital stock of Pacific Western Oil Corporation listed on the New York Stock Exchange? A. Yes.

36-Q. What was the high, low and closing price per share of Pacific Western Oil Corporation stock on the New York Stock Exchange on October 4, 1947?

A. I am not a broker and have no personal knowledge to enable me personally to answer the question. I understand that high was 52, low was 51, close 51¾.

37-Q. What was the book value of Pacific Western Oil Corporation stock on October 4, 1947?

A. No records available to answer as of October 4, 1947.

38-Q. If you cannot answer the last preceding question, what is the date of Pacific Western Oil Corporation's last balance sheet prior to October 4, 1947, and what was the book value of Pacific Western Oil Corporation stock on that date?

A. The last balance sheet of Pacific Western Oil Corporation is of September 30, 1947. I am not an accountant but I am advised by an accountant that the proper analysis of the balance sheet shows a book value of the stock as being $22.80 per share. The book values are determined by the value of

the assets carried on the books and did not in this case and I understand quite often do not represent the actual values of the assets. [126]

39-Q. Did D. T. Staples sign, as defendant's President, a document entitled "Agreement of Merger between Sunray Oil Corporation (a Delaware corporation) and a majority of its directors, Pacific Western Oil Corporation (a Delaware corporation) and a majority of its directors, and Mission Corporation (a Nevada corporation) and a majority of its directors"? A. Yes.

40-Q. Is "Exhibit B" to the Complaint herein a true and correct copy of the Agreement referred to in Question 39? A. Yes.

41-Q. Did D. T. Staples also sign said Agreement of Merger as one of defendant's directors?

A. Yes.

42-Q. When and where did he sign said Agreement of Merger as President and as director of defendant?

A. In Tulsa, Oklahoma, on October 18, 1947.

43-Q. State the name of the other directors of defendant who signed, and when and where they signed said agreement.

A. Names of Directors: Arthur M. Boal, D. T. Staples, Fero Williams, Emil Kluth. When Signed: 10/18/47. Where Signed: In Tulsa, Oklahoma. [127]

44-Q. Who prepared or drafted said Agreement of Merger, and at whose request?

A. My understanding is that the initial rough draft was prepared by Breed, Abbott and Morgan,

counsel for Sunray, at the request of Sunray. It was then reviewed by counsel for Pacific Western Oil Corporation who made suggestions orally and by telephone. The final draft was then prepared and was submitted to and reviewed by counsel for Mission Corporation in Tulsa, Oklahoma, prior to the meeting on October 18, 1947.

45-Q. Were the terms and provisions included in said Agreement discussed with any of defendant's officers or directors prior to October 18, 1947.

A. Yes.

46-Q. If you answer the last preceding question in the affirmative, state the names of such officers and directors, the date or dates of the discussion, and the names of persons with whom the discussion was had.

A. I cannot give an answer that will be inclusive of all possible discussions of said Agreement with all of the officers and directors of Mission Corporation. On the 17th of October, 1947, in the city of Tulsa, I discussed it with Directors Dockweiler, Williams, Kluth and Boal, and for some time prior thereto I had at various times, the precise dates of which I am unable to give, discussed the proposed merger with the individual directors above named either personally or over the telephone. [128]

47-Q. Did any officer, director or agent of Mission Corporation participate in the preparation or drafting of said Agreement of Merger?

A. My information is that no officer, director or agent of Mission Corporation participated in the

drafting of the Agreement of Merger but I cannot answer definitely on that point. Director Boal who was counsel for Mission Corporation stated both at and before the meeting that he had prior to the meeting examined and approved the Agreement as to form and legality.

48-Q. If your answer to the last preceding question is in the affirmative, state the names of all officers, directors, or agents of defendant so participating and the date or dates each participated in the preparation or drafting of said Agreement of Merger? A. See answer to 47.

49-Q. What is the date of the meeting of the Board of Directors of defendant at which a merger of defendant, Pacific Western Oil Corporation and Sunray Oil Corporation was first proposed or considered? A. October 18, 1947.

50-Q. What is the date of the meeting of the Board of Directors of defendant at which the Agreement of Merger, now signed by D. T. Staples, as defendant's President, was first presented to the Board? A. October 18, 1947. [129]

51-Q. Was said Agreement of Merger first presented to defendant's Board of Directors on October 18, 1947?

A. Yes, but the substance of the proposed agreement had previously to said meeting been examined, discussed and analyzed by a majority of the said Board, to wit, by Directors Dockweiler, Boal, Kluth, Williams and also by myself although as stated, I did not become a director until said meeting. It is also my information that the pro-

posed merger had been discussed previously to the said meeting with Directors Skelly and Hyden.

52-Q. At the meeting of defendant's directors on October 18, 1947, approximately how much time was devoted to consideration of the terms of the merger agreement?

A. Four hours and forty-five minutes.

53-Q. Name the directors of defendant voting at said meeting for the proposed merger agreement, or its approval and adoption, and those voting against it.

A. For: Messrs. Boal, Kluth, Staples and Williams. Against: Messrs. Skelly and Hyden. Not Voting: Thomas A. J. Dockweiler.

54-Q. On or prior to October 18, 1947, did any person representing defendant make any appraisal of the assets of defendant, of Pacific Western Oil Corporation, and of Sunray Oil Corporation?

A. There was no formal appraisal made by any person representing Mission Corporation but a careful analysis of the proposed merger was made by Mr. Fero Williams, a director of Mission Corporation, and I am informed that in making the said analysis Mr. Williams had before him among other things the following: Detailed valuation report of Sunray Oil Corporation by Harold J. Wasson, Consulting Engineer, as of March 31, 1946; prospectus of Sunray Oil Corporation covering a debenture issue in 1946; current operating and financial statements; a current report showing tentative estimates of the oil and gas reserves of Sunday Oil Corporation and Pacific Western Oil

Corporation; various other statements and data concerning the constituent corporations, and considered among other things the following factors: oil and gas reserves of the constituent corporations; production of crude oil and other petroleum products; earnings of refineries of Sunray Oil Corporation; production of refined products of Sunray Oil Corporation; history and prospects of constituent corporations; stock market values; earnings and dividend histories and records of constituent corporations; status of the companies, future prospects, expectancy of appreciation and depreciation of values, relationship of values of Skelly and Tidewater, and the continuity of the interests of the present Mission stockholders. My further information is that in making this analysis Mr. Williams was assisted by and collaborated with Mr. Emil Kluth who is head of the Geological Department of Pacific [131] Western Oil Corporation, and is also a Vice-President and Director of Mission Corporation. Mr. Williams discussed his analysis at length with Directors Dockweiler, Kluth and Boal and with myself in Tulsa on October 17, 1947, and I understand that some of said Directors had previously to the said October 17, 1947, discussed the analysis with Mr. Williams when I was not present.

55-Q. If your answer to the last preceding question is in the affirmative, state the name of the person who made the appraisal, by whose authority it was made, the time spent in making it and the appraised value of the assets of each of the three corporations, as shown by said appraisal.

A. See answer to 54.

56-Q. If you answer question 54 in the affirmative, state where or not any written report of such appraisal was made, to whom such report was made, and where the report or a copy of it may be found?

A. See answer 54.

57-Q. Was such report presented to the meeting of defendant's directors on October 18, 1947?

A. Mr. Williams had his working papers with him at the meeting but made no formal report, each director being asked by myself as President as to what he thought of the proposed deal and each expressing his views thereof, Mr. Williams in general summarizing his views as to the fairness of the basis of exchange provided by the Agreement.

58-Q. Was the said Agreement of Merger submitted to defendant's counsel for his opinion prior to October 18, 1947? A. Yes.

59-Q. If you answer the last preceding question in the affirmative, state (a) the name of counsel, (b) the date said agreement was submitted to him, (c) whether or not a written opinion was obtained, and (d) whether or not such opinion was submitted to the Directors Meeting of October 18, 1947?

A. (a) Name of counsel—Arthur M. Boal, (b) Date Agreement was submitted—October 17, 1947, (c) Was written opinion obtained—No, (d) Was opinion submitted—Yes, orally.

60-Q. At the meeting of defendant's directors on October 18, 1947, was there submitted to the Board and financial statements, balance sheets or profit and loss statements of Pacific Western Oil

Corporation, Sunray Oil Corporation and defendant?

A. The balance sheets and profit and loss statements of the Pacific Western Oil Corporation, Sunray Oil Corporation and Mission Corporation were in the possession of Mr. Williams as a part of his working papers and as a part of the data from which he had made his analysis of the values of the assets of the respective companies and he had them with him at the said meeting of October 18, 1947, and they were freely available at the said meeting to any director desiring to see or discuss them. Included among Mr. Williams' working papers were the balance sheets and profit and [133] loss statements of all of the companies as of August 31, 1947, and there was also included the balance sheet and profit and loss statement of Mission Corporation as of September 30, 1947.

61-Q. If your answer to the last preceding question is in the affirmative, state as to each of said corporations what financial statements, belance sheets and profit and loss statements were submitted, and the date of each.

A. See answer to 60.

62-Q. Are any deficiencies in income or excess profits taxes being asserted or proposed or have any been assessed by any governmental officer, agent, or bureau against Pacific Western Oil Corporation or Sunray Oil Corporation?

A. As to the Sunray Oil Corporation, I am advised by that company that the answer is "No," but that there are certain tax years which are still

open and that Sunray has set up a reserve to meet possible additional taxes in the sum of $547,670.00. As to Pacific Western Oil Corporation no deficiencies in income or excess profits taxes have been assessed. but I understand that the internal revenue agents are working on a proposed assessment.

63-Q. If your anwer to the last preceding question is in the affirmative, state as to each of such corporations (a) the tax year or years involved (b) the amount of the deficiencies asserted, [134] proposed or assessed, (c) whether or not such amount or amounts are reflected in the balance sheet of the corporation concerned?

A. The tax year or years involved—1940 to 1946, inclusive, as to both companies. (b) The amount of the deficiencies asserted, proposed or assessed—as stated above I am advised that no additional assessments have been levied as to Sunray Oil Corporation and none proposed that I know of, but the said company has set up the reserve to meet any future additional taxes as set out in the answer to the foregoing question.

As to Pacific Western Oil Corporation no formal assessment has been made but I understand agents of the Bureau of Internal Revenue have orally stated that approximately $98,000.00 additional tax will be proposed to be assessed against Pacific Western.

(c) Whether or not such amount or amounts are reflected in the balance sheet of the corporation concerned—Yes.

64-Q. What tax year or years of Pacific Western Oil Corporation or Sunray Oil Corporation are open for the assessment of deficiencies in income or excess profits taxes?

A. As to Sunray, I am advised that it is for the years 1940 to 1946, inclusive; as to Pacific Western—1940 to 1946, inclusive.

65-Q. Was the information disclosed by your answers to the last three preceding questions disclosed to the defendant's directors at their meeting of October 18, 1947? [135]

A. I do not recollect that the precise matters in the form set out in the last three preceding questions were formally discussed by the Board at its meeting of October 18, 1947. I do recollect clearly that in connection with the resolution approving the merger Director Boal stated that he had the financial statements of all of the companies before him and asked if the Board would like to have them read; that Director Skelly, after consultation with his two lawyers, one seated on each side of him, stated in substance that there was no need of the financial statements being read as all directors had them and were perfectly capable of reading and analyzing them.

66-Q. At or before the meeting of defendant's directors on October 18, 1947 did any of defendant's directors, including D. T. Staples, hear any statement to the effect that the proposed merger must be proceeded with speedily or without delay, or that it must be consummated during the year 1947?

A. I cannot answer as to what possible statements were heard by other directors or officers, but I personally never heard from any of the other directors or officers or any other persons or at all any statements in the form set out in question 66. I did hear statements to the effect that the sale if it were effected must be consummated during the year 1947 and that the sale was conditioned on the consummation of the proposed merger and a tax closing agreement. [136]

67-Q. If the answer to the last preceding question is in the affirmative, please state (a) when and where the statement was made, (b) who made it, (c) in whose presence it was made, and (d) the substance of the statement?

A. (a) When and where the statement was made—In Tulsa preceding and at the meeting of October 18, 1947, and on numerous occasions in Los Angeles during several months preceding October 18, 1947. (b) Who made it—Mr. Dockweiler, Mr. Petigrue, and Mr. Hecht, and possibly others. (c) In whose presence it was made—Some in the presence of Mr. Dockweiler and myself and possibly other persons, some in presence of Mr. Petigrue and Mr. Hecht and possibly others. (d) The substance of the statement—Mr. Dockweiler said that any deal for the sale of the Pacific Western Oil Corporation's stock of the Trustees of the Sarah C. Getty Trust would have to be consummated with the year 1947; that he as Trustee would not take any chance of a change in the tax laws in the year 1948. I also heard both Mr. Petigrue and

Mr. Hecht state that the sale was conditioned upon the merger and a tax closing agreement. I also saw the contract of October 4, 1947.

68-Q. Did any of defendant's directors, including D. T. Staples, ever hear any statement to the effect that Thomas A. J. Dockweiler and George Franklin Getty II, as trustees or otherwise, and J. Paul Getty, [137] individually, and as trustee or otherwise, or any of them, desired to effect a sale of their Pacific Western Oil Corporation stock and receive the money therefor not later than December 31, 1947?

A. As heretofore stated I cannot answer as to what possible statements were heard by other directors or officers but I personally never heard from any of the other officers or directors or any person at all any statement in the form set out in the question. I did hear statements to the effect that heretofore have been set out in answer to question 66.

69-Q. If you answer the last preceding question in the affirmative, please state (a) when and where the statement was made, (b) who made it, (c) in whose presence it was made, and (d) the substance of the statement?

A. (a) When and where the statement was made—I heard the statements set out in the answers to Interrogatories 66 and 67 on one or more occasions in Los Angeles, prior to the meeting of the directors of Mission Corporation on October 18, 1947, and the substance of the statement in Tulsa, Oklahoma, prior to the meeting of October 18, 1947.

(b) Who made it—See answer to 67(b). (c) In whose presence it was made—See answer to 67(c). (d) The substance of the statement—See answer to Question 66.

70-Q. Did any of defendant's directors, including D. T. Staples, ever heard any statement to the effect that for tax reasons, or for reasons concerned with tax liability, Thomas A. J. Dockweiler and George Franklin Getty II, as trustees or otherwise, and J. Paul Getty, as trustee, [138] individually or otherwise, or any of them, desired to dispose of their Pacific Western stock for cash before the end of the year 1947?

A. The answer to 70 in the form it is asked is No. I cannot answer as to what others heard but I never heard and do not believe any other director ever heard any statement that either Thomas A. J. Dockweiler or George Franklin Getty II, as Trustees or otherwise, or J. Paul Getty as Trustee or individually or otherwise desired to sell the Pacific Western Oil Corporation stock or any of it for cash before the end of the year 1947, for tax reasons or saving any taxes. I did hear statements as set out in answer to interrogatory 66.

71-Q. If your answer to the last preceding question is in the affirmative, please state (a) when and where the statement was made, (b) who made it, (c) in whose presence it was made, and (d) the substance of the statement.

A. The answer to 70 in the form in which the question is answered being in the negative, I take it there is no necessity of answering 71. If the

answer as to the statements I did hear can be construed as an affirmative answer, then (a) when and where the statements are made, see answer to 67(a); (b) who made it, see answer 67(b); (c) in whose presence it was made, see answer to 67(c); (d) substance of statement, see answer to 67(d).

72-Q. At the meeting of defendant's directors on October 18, 1947, was there any discussion on the sale of stock of Tide Water Associated Oil Company owned by defendant?

A. My recollection is that sometime during the discussion of the proposed merger the statement was made that Sunray Oil Corporation had indicated that if the merger was consummated Sunray intended to sell the Tide Water stock. [139]

73-Q. If you answer the last preceding question in the affirmative, state (a) the substance of the discussion, and (b) whether or not any vote was taken or resolution adopted concerning it, and (c) the action authorized by the vote or resolution.

A. (a) See answer to 72. (b) No. (c) No resolution was passed or action taken on the matter by the Mission Board nor was any discussion had of any sale by Mission of any stock which it owned.

74-Q. Has the question of selling defendant's stock in Tide Water Associated Oil Company for $25.00 per share ever been submitted to a meeting of defendant's stockholders?

A. No—But Mission proxy statement shows that if merger is consummated Sunray Oil Corporation as the surviving corporation intends to sell such stock.

75-Q. If the proposed merger of Pacific Western Oil Corporation, Mission Corporation and Sunray Oil Company is accomplished, will Skelly Oil Company, a Delaware corporation, become a subsidiary of the corporation surviving the merger?

A. If the proposed merger is consummated the Sunray Oil Corporation will own approximately 60% of the stock of Skelly Oil Company.

76-Q. Does Sunray Oil Corporation have outstanding 2⅞% debentures and 1⅞% promissory note or notes? A. Yes. [140]

77-Q. If you answer the last preceding question in the affirmative, what is the principal amount of said debentures and note or notes?

A. To the best of my information and belief my answer is $20,000,000.00—2⅞% Debentures and $9,000,000.00—1⅞% Promissory Note or Notes.

78-Q. Is it true that if Sunray Oil Corporation's debentures are redeemed this year $20,750,000.00 will be required to redeem debentures of the principal amount of $20,000,000.00? A. Yes.

79-Q. What was the dollar amount of the combined current liabilities of Pacific Western Oil Corporation, Mission Corporation and Sunray Oil Corporation on (a) September 30, 1947, (b) October 18, 1947?

A. (a) My information is that the balance sheets of Pacific Western Oil Corporation, Mission Corporation and Sunray Oil Corporation as of September 30, 1947, show, as of said date, combined current liabilities of $9,009,012.30. (b) There are

no balance sheets available for any of the companies as of October 18, 1947.

80-Q. If you cannot answer the last preceding question, do you know the dollar amount of such current liabilities on any date prior to October 18, 1947? A. See answer to 79.

81-Q. If you answer the last preceding question in the affirmative, state such dollar amount and date. [141] A. See answer to 79.

82-Q. On October 18, 1947, did you have the information included in your answer to question 79 and 81?

A. No, but we had balance sheets for each of the companies as of August 31, 1947 and the balance sheets of Mission Corporation as of September 30, 1947.

83-Q. What may be the maximum amount, in dollars, required to purchase Pacific Western Oil Corporation stock, if the merger of Pacific Western Oil Corporation, Mission Corporation and Sunray Oil Company becomes effective?

A. $93,277,640.00.

84-Q. Is it contemplated that the corporation surviving the merger will make that payment?

A. It is contemplated that Sunray Oil Corporation will make the payment prior to the Agreement of Merger becoming effective.

85-Q. If your answer to the last preceding question is in the negative, who or what corporation is it contemplated will make the payment?

A. Sunray Oil Corporation.

86-Q. Is it true that on the effective date of the merger, or immediately thereafter, the surviving corporation will require $29,750,000.00 in cash to redeem the debentures and pay the note or notes now issued by Sunray Oil Corporation?

A. Yes. [142]

87-Q. Why must such redemption be made?

A. It is my understanding that it is necessary that said redemption be made because of provisions contained in the debentures and notes issued by Sunray Oil Corporation as said matter is fully explained on page 6 of the Proxy Statement sent by Mission Corporation to its stockholders.

88-Q. How is cash to be obtained to make payment to Pacific Western Oil Corporation stockholders and to redeem the debentures and pay the note above mentioned?

A. As explained on page 6 of the Proxy Statement of Mission Corporation heretofore referred to, it is contemplated that certain Tide Water stock will be sold to provide approximately $40,000,000.00 and additional funds will be raised through the sale of new securities of Sunray.

89-Q. On the effective date of the proposed merger and after payments of cash mentioned in questions 83 and 86, what is contemplated or estimated to be the dollar amount of each of the following liabilities (including preferred stock as a liability) of the surviving corporation: (a) Current Liabilities? (b) Debentures or Notes? (c) Prior Preferred Stock? (d) Second Preferred Stock? (e) Other liabilities, not including common stock?

A. I am informed and believe that the companies have estimated approximately as follows: (a) Current Liabilities $21,000,000, (b) Debentures or notes $56,825,000, excluding [143] approximately $4,000,000 included in current liabilities. (c) Prior preferred stock $26,189,300. (d) Second preferred stock $25,000,000. (e) Other liabilities not including common stock $2,785,967.46, excluding $129,-866.80 included in current liabilities. I understand that the above answers are based on pro forma condensed consolidated balance sheet as of August 31, 1947, and assume purchase by Sunray of all outstanding shares of capital stock of Pacific Western, the sale of Sunray of $40,000,000 new debentures at the principal amount, a new promissory note in the sum of $14,000,000 in principal amount, and 250,000 shares of Second Preferred Stock at par in retirement of present funded debt, the sale, at $25.00 per share of the common stock of Tide Water Associated Oil Company and provision for income taxes on such sale in giving effect to payment on November 17th of 5 per cent common stock dividend and to the consummation of certain other transactions between August 31, 1947, and the effective date of the merger not pertaining to merger agreement. Such figures represent preliminary estimates only, subject to change since accountants cannot presently produce the final computations.

90-Q. Is there included in your answer to the last preceding question the amount of all commissions, charges and all underwriters discounts to be paid in connection with the various transactions

to be closed on or about the effective date of the merger?

A. Yes, I so understand, except that expenses not included in answer to 89 will be paid in cash and therefore will not be reflected in the figures given in the answer to question 89.

91-Q. How much commission is to be paid Eastman, Dillon & Company, by whom and for what is the payment to be made?

A. My understanding is that as set forth in the Proxy Statement of Mission Corporation on pages 7 and 8, Eastman, Dillon & Company will receive twenty (20) annual installments commencing January 1, 1949, of $87,700.00 without interest, an aggregate of which would be $1,754,000.00, and Eastman, Dillon & Company may receive a placement fee of not more than one-fourth (¼) of one per cent (1%) of the principal amount of the notes if any which are sold by Sunray and also obtain discounts on securities sold by Eastman, Dillon & Company as set out in said Proxy Statement of Mission Corporation on pages 7 and 8, and are payable by Sunray.

92-Q. How much commission is to be paid in connection with the sale of stock of Tide Water Associated Oil Company now owned by Mission Corporation and Pacific Western Oil Corporation and by whom will it be paid? [145]

A. My understanding is that as set forth in the said Proxy Statement of Mission Corporation that if the merger is consummated E. A. Parkford will be paid $292,362.00 by Sunray, and it is also my

understanding that as stated in the said Proxy Statement a consideration for a portion of the fee of Eastman, Dillon & Company as set forth in the foregoing answer is for the sale of said Tide Water stock.

93-Q. What is the total amount of placement fees, underwriters' commissions and discounts to be paid or allowed on the issuance or sale of securities, such as debentures, notes, and preferred stock of the surviving corporation, and by whom will it be paid?

A. See answer to questions 91 and 92. It is my information that in addition to the commissions set forth in said answers to questions 91 and 92, that Sunray has estimated other additional expenses and as set out on page 8 of the Proxy Statement of Mission Corporation in the amount of approximately $500,000.00, to be paid by the surviving corporation.

94-Q. Is the corporation surviving the proposed merger to pay the commissions and discounts mentioned in the last three questions?

A. I understand that they are payable by Sunray Oil Corporation but I am unable to say whether any portion of the $500,000.00 referred to in my answer to question 93 will be paid before or after the merger or by Sunray Corporation before the merger. [146]

95-Q. State which, if any, of the amounts disclosed by your answers to questions 91, 92 and 93 are included in the figures given in answer to question 89. A. All but $500,000.00.

96-Q. Assuming that the Tide Water Associated Oil Company stock now owned by Pacific Western Oil Corporation and defendant is sold for $25.00 per share, will any income tax or capital gains tax liability be incurred thereby?

A. I am advised by tax counsel that the tax liability will be incurred.

97-Q. If your answer to the last preceding question is in the affirmative, state the estimated amount of such tax and by whom it will be payable.

A. I am advised that the tax liability has been estimated, excluding the possibility of any offsets, at $8,215,405.00 and that it will be payable by Sunray Oil Corporation.

98-Q. Is it not a fact that Tide Water Associated Oil Corporation's commitment to purchase its shares owned by Pacific Western Oil Corporation and Mission Corporation is conditioned on (a) approval of the stockholders of Tide Water Associated Oil Company, and (b) obtaining of a loan of approximately $50,000,000.00 by Tide Water Associated Oil Company?

A. I am informed by Sunray Oil Corporation that each of the foregoing is a condition to Tide Water's Agreement to purchase such shares. [147]

99-Q. Is it not a fact that the meeting of the stockholders of Tide Water Associated Oil Corporation to vote upon approval of said stock purchase will not be held until December 8, 1947?

A. That is my information.

100-Q. If said sale of Tide Water Associated Oil Company stock is not consummated, what effect

will that have upon (a) the proposed merger, and (b) the ability of the surviving corporation to obtain required cash?

A. (a) I am not in a position to state definitely how the merger would be affected if the sale of Tide Water Associated Oil Company's stock is not consummated and what effect it would have on the ability of the surviving corporation to obtain required cash, but I am of the belief that it would complicate and possibly prevent the consummation of said merger. (b) Complicate and possibly prevent the surviving corporation from obtaining the required cash.

101-Q. If Thomas A. J. Dockweiler and George Franklin Getty II, as trustees, and J. Paul Getty, individually and as trustee, are not paid in cash $68.00 per share for their stock in Pacific Western Oil Corporation on or immediately prior to the effective date of the proposed merger, what effect will that have upon the proposed merger?

A. In my opinion there would be no merger.

102-Q. Has any estimate been made of the amount of cash which may be required for payment to dissenting shareholders of Pacific Western Oil Corporation, Mission Corporation [148] and Sunray Oil Corporation of the value of their shares?

A. No estimate has been made and it is not believed that at the present there is any basis for such estimate and that any attempt would be based wholly on speculation.

103-Q. If you answer the last preceding question in the affirmative, who made the estimate and what is the dollar amount of such estimate?

A. See answer to 102.

104-Q. What, if any, arrangements have been made to obtain cash to pay all such dissenting shareholders the value of their shares? A. None.

[Original Signed]

[Seal] D. T. STAPLES. [149]

State of California,
County of Los Angeles—ss.

David T. Staples, being first duly sworn, deposes and says: That I am the President of Pacific Western Oil Corporation, a Delaware corporation, and the David T. Staples mentioned in the interrogatories propounded to said corporation, and the answers to the foregoing interrogatories are true as to the best of my information and belief.

[Original Signed] D. T. STAPLES.

Subscribed and sworn to before me this 18th day of November, 1947.

[Seal]

[Original Signed] DOROTHY HENRY,
Notary Public in and for said County and State.

My Commission Expires May 29, 1949.

Service by copy admitted November 20, 1947.

WM. WOODBURN,
One of attorneys for
Plaintiff.

[Endorsed]: Filed Nov. 20, 1947. [150]

[Title of District Court and Cause.]

AFFIDAVIT OF LEO A. ACHTSCHIN

State of Nevada,
County of Washoe—ss.

Leo A. Achtschin, being first duly sworn on oath, deposes and says:

I am a member of the firm of Meyer and Achtschin of Dallas, Texas, Petroleum Consultants. From February 1, 1945 to February 1, 1947, I was a member of the firm of DeGolyer and MacNaughton, Petroleum Consultants. For the three years immediately preceding February 1, 1945, I was working for DeGolyer and MacNaughton on a leave of absence from the Society for Savings Bank of Cleveland, Ohio, where I was Loan Officer and head of the Credit and Statistical Department. I have been employed and have done work in connection with mergers of corporations. In connection with the merger of George F. Getty, Inc., and Pacific Western Oil Corporation in 1946, the firm of DeGolyer and [153] MacNaughton was employed to appraise the value of the assets of each of those corporations and to work out the basis of merger. I was the member of that firm in charge of the appraisal and the working out of the basis of merger.

I have examined and analyzed the financial statements contained in Mission Corporation's notice of meeting and proxy statement, including the December 31, 1946, balance sheets of Sunray Oil Corporation, Pacific Western Oil Corporation, Mis-

sion Corporation and Sunray Oil Corporation and Wholly Owned Subsidiary Pro Forma Condensed Consolidated Balance Sheet, December 31, 1946.

Considering the assets of Sunray Oil Corporation, Pacific Western Oil Corporation and Mission Corporation, which will be acquired and retained by Sunray Oil Corporation at the values shown on the December 31, 1946, balance sheets of those companies, and the liabilities of the surviving corporation as shown by the pro forma condensed consolidated balance sheet above mentioned, it appears that the liabilities and preferred stock of the surviving corporation exceed such assets by approximately $7,700,000. On this calculation the common stock of the new corporation is worth approximately $7,700,000 less than nothing. The detail of the calculation supporting this analysis is attached to this affidavit as Exhibit 1.

The book value of the assets of the constituent companies, which will be owned and retained by Sunray after sale of the Tide Water stock, are shown on their balance sheets at $114,568,620, but are shown on the pro forma condensed consolidated balance sheet at $202,281,968, which is a write-up of $87,713,348. If this write-up is accepted and the number of shares of stock shown on the pro forma balance sheet is corrected to include [154] a five per cent stock dividend, which Sunray has declared, then the book value of each share of common stock of the surviving corporation is $8.60 and the book value of six (6) shares is $51.60.

I have taken the value of the surviving corporation's investment in Skelly Oil Company as shown by the pro forma condensed consolidated balance sheet and substituted it for the value of Skelly stock shown in the calculation of Mission's assets at page 15 of the Mission proxy statement. Using all other values shown at page 15 of the proxy statement for Mission assets, the value of each share of Mission stock is $72.01 or $20.41 more than the book value of six (6) shares of the surviving corporation.

On the basis last mentioned, by exchanging one share of Mission Corporation stock for six (6) shares of stock in the surviving corporation, W. G. Skelly's loss on 14,000 shares would be $285,740. The total loss to the owners of the 732,337 shares of Mission stock (excluding Pacific Western's ownership of that stock) amounts to $14,946,998. I attach to this affidavit as Exhibit 2 the detail of the calculation by which this result is arrived at.

All of the foregoing computations are based upon the financial statements and figures shown in the Mission proxy statement.

/s/ LEO A. ACHTSCHIN.

Subscribed and sworn to before me this 22nd day of November, 1947.

[Seal] /s/ CATHERINE TWEEDT,
Notary Public in and for the County of Washoe, State of Nevada. [155]

EXHIBIT 1

ASSETS OF CONSTITUENT COMPANIES PER BALANCE SHEETS OF DEC. 31, 1946, LIABILITIES PER PRO FORMA, ETC.

BALANCE SHEET

Total assets of Sunray, Pacific Western and Mission Corporation, as shown by their balance sheets of Dec. 31, 1946		$142,301,531
Deduct:		
Balance sheet value of Tide Water stock to be sold	$17,785,826	
Pacific Western's Mission Stock (as entire Mission Corporation is being acquired	9,947,085	
Total		27,732,911
Total assets of surviving corporation per balance sheets of Dec. 31, 1946		$114,568,620
Total Liabilities and Preferred Stock of Surviving Corporation per Pro Forma Condensed Consolidated Balance Sheet		$122,336,382

On this basis there is a deficit of $7,767,762 before common stock is considered at all. In other words the common stock is worth $7,767,762 less than nothing.

EXHIBIT 2

PER SHARE VALUE OF MISSION STOCK AND STOCK OF SURVIVING CORPORATION BASED ON PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET, DECEMBER 31, 1946

Comment:

Assets shown on balance sheets of the constituent companies at $114,568,620 are shown on the pro forma balance sheet at $202,281,968, which is a write-up of $87,713,348.

The pro forma balance sheet omits from capital account Sunray's 5% stock dividend. The correct figure for total common stock of the surviving corporation outstanding will be 9,298,767 instead of the figure shown on the pro forma balance sheet.

Surviving Corporation—Value for Each Share of Common—$8.60.

Add the amount of surplus and the figure for common stock on the pro forma balance sheet (total $79,945,586) and divide by number of shares of common to be outstanding.

This gives a value of $8.60—for each such share. For six shares the value is $51.60.

Mission Corporation—

Value of Each Share—$72.01

Use the values for Mission assets at page 15 of proxy statement for all assets except Skelly stock. For Skelly stock use the same value used in the pro forma balance sheet. Net value of Mission assets

will then be $98,944,605. Divide this by Mission's outstanding stock, 1,374,145 (not including shares in its treasury). [157]

This gives a value of $72.01 for each share of Mission, approximately $20.41 more than the value of six shares of the surviving corporation.

Loss Computation:

By exchanging one share of Mission for six shares in the surviving corporation:

Plaintiff's loss on 14,000 shares would be $285,740.

The holders of Mission stock other than Pacific Western have 732,337 shares and their total loss would be $14,946,998.

[Endorsed]: Filed Nov. 25, 1947. [158]

[Title of District Court and Cause.]

AFFIDAVIT OF CHESLEY C. HERNDON

State of Nevada,
County of Washoe—ss.

Chesley C. Herndon, of lawful age, being first duly sworn, deposes and says:

I reside, and have resided during the last 33 years, at Tulsa, Oklahoma. I am and have been during the last 28 years the senior vice president and a director of Skelly Oil Company (hereinafter called Skelly), which has its principal business office at Tulsa. During the same 28 years, William G. Skelly, of Tulsa, has been and now is the president and a director of Skelly Oil Company. I am not and

have never been an officer or director of Mission Corporation (hereinafter called Mission) or Pacific Western Oil Corporation (hereinafter called Pacific).

The first time I heard of a possible merger of Skelly, [159] Mission, Pacific, and Sunray Oil Corporation (hereinafter called Sunray), was last Memorial Day (May 30, 1947). On the preceding day, Lloyd Gilmour, head of the New York investment banking firm of Eastman, Dillon & Company (hereafter called Eastman Dillon), and at that time a director of Pacific, who was in Tulsa, asked Mr. Skelly for a meeting with himself and me the following morning, Memorial Day, at Mr. Skelly's office. Mr. Skelly granted the request and he and I met Mr. Gilmour at that time and place. Mr. Gilmour then and there stated that J. Paul Getty and the Getty Trust, of Los Angeles, owners of 85% of the stock of Pacific, had recently tried to sell their stock, at $68 per share, to Tide Water Associated Oil Company, but that the sale had failed of consummation; that he, Gilmour, had presently entered upon a discussion with J. Paul Getty for the purchase by Eastman Dillon of the Gettys' Pacific stock at $58 per share or less, but that in order to raise the money for the purchase Eastman Dillon would have to "do a deal," as he expressed it, involving a merger of Skelly, Mission, Pacific, and Sunray (for which last-named company Eastman Dillon were the bankers and financial advisers and over the management of which they exercised strong influence). The new corporation, proposed to be

called Skelly-Sunray Oil Company, would undertake large new funded debt and preferred stock issues to be sold to the public by Eastman Dillon, and thereby Eastman Dillon would raise the money with which to pay the Gettys. He dwelt upon the advantage to Skelly and to three thousand stockholders who owned the 41% of Skelly stock not owned by Mission, of getting the Gettys out of their position of dominance in the management of Skelly, in which company, although their proprietary interest was equivalent to only 23%, they [160] nevertheless exercised absolute control through the pyramid they had erected (the Gettys owning 85% of Pacific, Pacific owning 47%, which was de facto control, of Mission, and Mission owning 59% of Skelly). Mr. Gilmour's tentative plan, as presented by him, contemplated that the Gettys would not be paid all cash but would be left in the new company with something like 20% of its common stock; that Mission's thirty thousand public stockholders would be given some Skelly-Sunray preferred stock and some common; that Sunray's preferred stockholders would keep their preferred stock and its common stockholders their common stock; but that Skelly's three thousand minority stockholders would be given only Skelly-Sunray common stock. It appeared from his presentation that the new company would start with a very weak capital structure, and with at least $125,000,000 of funded debt and preferred stock issues ahead of its common stock, and it seemed to Mr. Skelly and me that this weak junior position of the common stock would not be good for the Skelly minority stockholders who would hold

nothing but the new Skelly-Sunray common stock. Mr. Skelly and I pointed out to Mr. Gilmour that in Skelly the shareholders were behind no preferred stock and only $15,000,000 of funded debt maturing over a term running to 1965, and that this debt was far more than covered by the company's net current assets. We told him that in view of the domination exercise by the Gettys over Mission and Skelly much more than ordinary circumspection and vigilant fairness would have to be used in such a merger, involving, as it would, huge benefits to the Gettys not shared in kind by minority stockholders, and that the deal would have to be so absolutely and obviously equitable to all interests as to be above suspicion of unfairness and that [161] such equity could be assured only by a complete common-yardstick appraisal of all the properties and of the businesses of the four proposed constituent companies, made at the same time and on the same philosophy of valuation by an independent appraisal firm of the highest standing, whose report when made would be universally accepted as a true gauge of the relative values of the four companies. Mr. Gilmour said that this was absolutely correct, that he would not dare to sponsor the merger on any other basis, and that consideration might be given to his proposal on that assumption. At the end of the interview, which lasted about two hours, Mr. Skelly told Mr. Gilmour that it did not seem to him that a merger such as Mr. Gilmour discussed would be good for Skelly and Mission, but that we would give the matter further thought and in a few days would call him on the phone at his New

York office (for which he said he was leaving immediately) and give him a more mature answer. He said to Mr. Skelly, at parting, "Bill, I think there is merit in this idea but if you don't like it, tell me so and I will drop it and devote my time to something else." Several days later, Mr. Gilmour called Mr. Skelly from New York to inquire what decision had been reached and Mr. Skelly told him that reflection had confirmed our first impression that the proposed merger would not be good for the stockholders of Mission and Skelly and that, consequently, we could not favor it. To this, Mr. Gilmour replied, "All right, I will just forget the whole thing."

I heard no more about the subject (and I think Mr. Skelly did not) until the latter part of July, when dispatches began to appear in the newspapers, to the effect that Eastman [162] Dillon were negotiating with the Gettys for the purchase of their 85% stock control in Pacific, looking toward a merger of Skelly, Mission, Pacific, and Sunray. Mr. J. Paul Getty had not then, nor has he at any time since, discussed the subject with Mr. Skelly and me, nor had Mr. Gilmour since the Memorial Day interview detailed above. The newspaper gossip was annoying and harmful because it tended to impair the morale of the Skelly operating organization.

On July 24, 1947, the Skelly directors assembled in Tulsa for a regular quarterly meeting. All ten directors were present, including Thomas A. J. Dockweiler of Los Angeles, a Getty trustee and a Mission as well as Skelly director, and Emil Kluth

and Fero Williams of Los Angeles, who were officers of Pacific, directors of Mission, and long time Getty employees. While the board was in session, and with Messrs. Dockweiler, Kluth and Williams present, Mr. Skelly answered a newspaper reporter's phone inquiry as to the truth of the merger rumors in the press by stating that neither Skelly nor Mission was considering any merger or was a party to any negotiation. With that statement, Mr. Dockweiler, Mr. Kluth and Mr. Williams explicitly agreed and it appeared that they had no more knowledge than Mr. Skelly and I. That was the first of a series of several such answers given by Mr. Skelly to the press.

Nothing further occurred within my knowledge, in relation to this matter, until September 25, when I received a phone call from Mr. F. L. Martin, Sunray Vice President. To that time neither Mr. Wright, Sunray President, nor Mr. Martin, had mentioned a merger to me. In this phone conversation of September 25, Mr. Martin told me that Mr. Wright had directed him by phone from Los Angeles to transmit a suggestion that Mr. Skelly and I [163] come at once to Los Angeles; that "this man Getty is going to sell his stock and Skelly and Herndon had better hurry out here and try to protect their interests." I said to Mr. Martin that I had not been informed by Mr. Getty or Mr. Wright or anybody else about a deal pending or proposed and that I did not know against whom or what I was to protect myself. I suggested that Mr. Wright phone Mr. Skelly directly, since they are well acquainted and do not need intermediaries. Mr.

Martin replied that Mr. Wright had already done so but that Mr. Skelly had answered that he had no information about any proposed deal and that nobody had negotiated with him; that hence he had nothing before him to justify a trip to California; and that his office was at Tulsa and he could be seen there at any time. I told Mr. Martin that Mr. Skelly's position in that respect seemed to me well taken but that in any event he was competent to determine whether he should go to California. I added that Mr. Wright could phone Mr. Skelly again if he should wish to do so. That ended the conversation.

Beyond further occasional newspaper rumors, apparently of the "planted" or "inspired" kind, and beyond learning in late September that J. Paul Getty and Mr. Dockweiler were putting great pressure on young George F. Getty II, Mr. Dockweiler's co-trustee, to sign an agreement which that young man desired not to sign for the sale of the trust's 51% of Pacific stock to Sunray at the cash price of $68 per share, I heard no more about the subject until Sunday, October 5, 1947. In the evening of that day, Mr. Skelly phoned me at my home to tell me that Mr. Dockweiler has just called him from Los Angeles, saying that on the previous day J. Paul Getty and the Getty trustees had signed an agreement with Sunray and Sunray had signed an [164] agreement with Eastman Dillon, for the sale of all the Getty stock in Pacific and for the merger of Skelly, Mission, Pacific and Sunray, and for financing in connec-

tion therewith, and demanding of Mr. Skelly that as president of Skelly and Mission he call immediate special meetings of the boards of those two companies to approve the agreement of merger and to take other action needed to carry it into effect. Mr. Skelly told me that Mr. Dockweiler said he and Mr. W. K. Petigrue, a New York attorney for Eastman Dillon and Sunray, would arrive in Tulsa within a few days and that the utmost speed was necessary because the Getty's required, for personal tax reasons, that the merger and all related financing be accomplished and the sale be closed and the cash paid to them before December 23, 1947. Mr. Skelly told me that he replied to Mr. Dockweiler that he had not seen any merger agreement or even a rough draft of one, that he knew nothing about the terms of the merger or the financing plans, and that he did not see how he could intelligently and properly call board meetings to approve documents or plans of which he knew nothing. He said he reminded Mr. Dockweiler that a routine special meeting of the Skelly board had already been called for October 17, and that the matter could be considered at that time if we should know anything about it. He said Mr. Dockweiler replied that Mr. C. H. Wright, president of Sunray, would arrive in Tulsa in a day or two from Los Angeles and would deliver to Mr. Skelly copies of the merger agreement and the other two agreements.

On Tuesday, October 7, Mr. Skelly and I saw, for the first time, documents of any kind whatever

relating to the merger or to the sale by the Gettys of their stock, and to [165] that time nobody had negotiated with or informed us concerning the arrangements. In the afternoon of that day, Mr. Wright called on Mr. Skelly in Tulsa and handed him three documents. They were:

(1) A photostat of an agreement of October 4, by J. Paul Getty and the Getty trustees to sell their 85% controlling stock of Pacific to Sunray.
(2) A photostat of an agreement between Sunray and Eastman Dillon for the related financing.
(3) A printed copy of a voluminous agreement of merger, whereby Skelly, Mission, and Pacific were to be merged into Sunray.

Mr. Wright asked that we examine these three documents and arrange a meeting with him. In order to expedite the examination, I immediately called Mr. Wright, with Mr. Skelly's consent, and asked for three additional copies of each document. These he sent to me at 2:15 p.m. the following day, October 8. After such examination as was possible in a limited time, I phoned him, at Mr. Skelly's request, late in the day, proposing a meeting in the Skelly directors' room at 11:00 a.m. the next day, Thursday, October 9.

At that time and place Mr. Skelly and I, with Messrs. German, Villard Martin, and Achtschin, met with Mr. Wright, his vice president Martin, his attorney Taliaferro, and a New York lawyer named B. B. Hadfield, who said he represented

J. Paul Getty. Mr. Wright then handed us one additional document, namely, a carbon copy of a three-page typewritten memorandum entitled "Plan of Purchase of Stock of Pacific Western and Merger of Pacific Western, Mission and Skelly into Sunray," which showed that it had been prepared in the office of Eastman Dillon [166] on September 18. We pointed out to Mr. Wright that in the "Agreement of Merger" and in this "plan" the ratios of exchange of Sunray stock for Mission and Skelly stocks had been deleted, and we inquired what ratios were proposed. He replied that he had had very little to do with the ratios, that they had been developed principally by Eastman Dillon, but that he understood these bankers contemplated about 5 or 6 shares of Sunray common for one Mission and 9 or 10 Sunray common for one Skelly. We inquired how these ratios were developed. He said they were related to market prices, book values, estimated oil and gas reserves, and possibly other factors. We asked whether he could inform us as to the formula or give us any figure used in applying these factors to the development of the ratios, and he said he could not. By this time it was clear that Mr. Wright had only superficial knowledge of the details of Eastman Dillon's plans. He said that in California the negotiations with the Gettys had been so long drawn out and tedious that he had been tempted more than once to withdraw and come home. I said, "Why didn't you?" He replied that he could not because the bankers would not let him withdraw, but he added that he,

too, would like "to make the deal." He said that on the following Monday, October 13, Messrs. Lloyd Gilmour of Eastman Dillon, Petigrue, New York attorney for Eastman Dillon and Sunray, and also Mr. Dockweiler, would be in Tulsa and available for a meeting and would know a great deal more than he, Wright, about the planned merger in all its aspects. I asked whether the present meeting should not be adjourned until the afternoon of that day and he agreed. As the meeting was breaking up, Mr. Hadfield said he was present as attorney for Mr. J. Paul Getty and as an observer for him. He said, further, that "Mr. Getty [167] is determined to make his sale and that the merger is necessary for that purpose, and Mr. Getty expects the companies to come to an agreement on the exchange ratios."

About noon of Monday, October 13, Mr. Dockweiler and Mr. Hadfield called on me at my office. I told them that during my 28 years as an officer and director of Skelly it had been my constant concern to represent faithfully all the stockholders, large and small alike, and that, speaking for that company in which I had an official responsibility, I did not see how the proposed merger could be intelligently considered as to its soundness and its fairness to all the various interests involved except on the solid basis of a common-yardstick appraisal by an independent concern of unimpeachable character, and I added that in the present circumstances this was more than usually important because the merger was planned to achieve a personal purpose

of the Gettys, and not for the benefit of the other stockholders of Pacific, Mission and Skelly and could and would be carried into effect by means of the absolute control which the Gettys hold over these three companies. Mr. Dockweiler and Mr. Hadfield said they were in complete and unqualified agreement with that view.

At 2:00 o'clock in the afternoon of that day (Monday, October 13) a general meeting was held in the Skelly Directors' Room, attended by Mr. Skelly, me, Mr. German, Mr. Villard Martin, Mr. Achtschin, and Mr. Patrick, and by Mr. Wright, his vice president Martin, his engineer Kravis, Mr. Hadfield, Mr. Gilmour, and Mr. Petigrue. Mr. Dockweiler abstained from attending. Mr. Skelly made the point at the opening of the meeting that this merger could not be intelligently and fairly considered without a common-yardstick appraisal. I said that two hours [168] earlier Mr. Dockweiler and Mr. Hadfield had agreed with me about its indispensability, at least so far as Skelly, the company for which I was officially qualified to speak, was concerned. I asked Mr. Hadfield if that was not so. He replied, yes, it was so, that he and Mr. Dockweiler had agreed on that with me that morning, and that he, Hadfield, would not take back a word of it. and that such was Mr. Dockweiler's position also. Without disputing the propriety of such a common-yardstick appraisal, Mr. Petigrue said that the time table that he was obliged to observe, in order for Sunray to close with the Gettys by the date of December 23, which was contemplated as final by the agreement between

themselves and Sunray, would not permit the appraisal to be made, for there was simply not time enough for it. I said that the Gettys and Sunray could extend the time from December 23rd. Mr. Petigrue and Mr. Gilmore replied that that could not and would not be done, since Paul Getty would not allow this matter to carry over into 1948 because of a possible change in his tax liability. Mr. Petigrue then said that in the light of our insistence on a common-yardstick appraisal and the agreement of Mr. Dockweiler and Mr. Hadfield with that view, it appeared that Skelly would have to be dropped from the merger plan, and that his group would have to consider proceeding with the merger of only Pacific and Mission into Sunray. He said that a majority of the Mission directors would be willing to proceed without an appraisal.

Two or three days later I learned that Skelly had been dropped from the plan and that it had been determined to go forward with a merger of the other three companies. After the exclusion of Skelly, I had no further official connection with the [169] matter and I attended no more meetings.

Further the affiant sayeth not.

/s/ CHESLEY C. HERNDON.

Subscribed and sworn to before me this 24th day of November, 1947.

[Seal] /s/ CATHERINE TWEEDT,
Notary Public in and for the County of Washoe, State of Nevada.

[Endorsed]: Filed Nov. 25, 1947.

[Title of District Court and Cause.]

AFFIDAVIT OF ARCH H. HYDEN

State of Nevada,
County of Washoe—ss.

Arch H. Hyden, of lawful age, being first duly sworn, deposes and says:

I went to work for George F. Getty in 1914, in Tulsa, Oklahoma, with his company "Minnehoma Oil Company." He died in May, 1930. I became resident manager of Minnehoma Oil and Gas Company, successor to Minnehoma Oil Company. Its operations were taken over by Skelly Oil Company on May 1, 1938, its offices closed and its personnel disbanded, which arrangement was made by the "Getty Interests." I have been a director of Skelly Oil Company since 1937 and an officer since 1938. However, at the annual meeting of Skelly Oil Company stockholders on October 18, 1947, I was not re-elected as a director of that company, Mission Corporation having voted its 59% of Skelly [171] stock for five new directors to replace an equal number of old directors who were active in the management and operation of Skelly Oil Company (notwithstanding the fact that proxies had been solicited for the re-election of all the old directors).

From 1943 to February 26, 1947, I was vice president and a director of Pacific Western Oil Corporation. From the latter part of 1937 to date I have been and still am a director of Mission Corporation, and since a date long prior to October 1, 1947, have been and still am the owner of six hundred (600) shares of Mission Corporation stock.

Prior to October 12, 1947, I had heard that the Gettys were negotiating for a sale of their stock in Pacific Western Oil Corporation and that there might be involved a merger of Skelly Oil Company, Pacific Western Oil Corporation, Mission Corporation and Sunray Oil Corporation but no one had conferred with or talked with me about or asked my opinion concerning the terms and conditions of any such merger or sale, nor had anyone stated to me what the terms and conditions would be.

On October 12, 1947, Thomas A. J. Dockweiler came to my home in Tulsa, Oklahoma, and had a conversation with me, which he asked me to treat as confidential. He mentioned a proposed merger, but we did not discuss the details.

On Thursday, October 16, 1947, Fero Williams came to my room in the Skelly Building at Tulsa. He said he arrived in town on the day before from Texas, where he had been in a hospital for a minor operation. He told me the proposed merger of Pacific Western, Mission, Skelly and Sunray was off and that a new deal was on involving Pacific Western, Mission and Sunray, Pacific Western stockholders were to receive $68 as in the other deal, and Mission was to be merged into Sunray. He said he had been working on some figures to see how this could be done. He did [172] some figuring on a pad in my room and said that using five or six shares of Sunray common for one share of Mission, the Mission stockholders would only lose a slight interest in Skelly and to offset this difference and the sale of Mission's Tide Water

Associated stock, Mission stockholders would have an interest in Sunray, including Pacific Western. I told him that as far as I was concerned as a Mission director, I would have to see values properly established for the underlying assets of the companies involved before I could intelligently pass on a plan of merger for the three companies.

Williams returned to my room later in the day and suggested that I resign as a Mission director to save me from embarrassment. I said I did not know about that but would think it over and let him know the next day, although I saw no reason why I should resign.

Late that same afternoon, Emil Kluth came into my room while Williams was there, saying he had just arrived for the meetings Friday and Saturday. He made some remark about the proposed merger of the four companies, and Williams said the merger deal had been changed and Skelly Oil Company would not be merged into Sunray Oil Corporation. He, Williams, also said to Kluth: "I will tell you about it when we go to the hotel." Soon after that they left my room.

On Friday afternoon, October 17, 1947, after the meeting of the Skelly board, Dockweiler came to my room. He asked me what I thought about the merger. I said, first, in regard to the suggestion made by Williams the day before, that I resign, I would not resign as I saw no reason for it and I thought I could and would do what was considered right for all stockholders and interests. He then asked me if I would vote for the merger if I [173] thought it was fair. I told him that if

values of the underlying assets of the companies were properly established and presented at the meeting and I thought the basis for merger was fair and equitable for all the Mission stockholders, I would vote for it. As I recall the conversation, he said "all right."

On October 18, 1947, I attended a meeting of the board of directors of Mission Corporation. About 3:00 o'clock p.m. at that meeting, for the first time I saw the Agreement of Merger and draft of the proxy statement. There was not presented to the board any appraisal report or any other pertinent information as to the value of the underlying assets of the companies concerned. Fero Williams and Emil Kluth expressed their opinions as to values. I said that I was not necessarily opposed to a merger or sale but would have to see an appraisal by competent, independent engineers as to the value of the underlying assets of all the companies involved. It was and still is my opinion that the Mission board of directors should have had before it an independent appraisal of all the values in considering the offer of merger.

At the directors' meeting I voted against approval of the merger agreement.

/s/ ARCH H. HYDEN.

Subscribed and sworn to before me this 24th day of November, 1947.

[Seal] /s/ CATHERINE TWEEDT,

Notary Public in and for the County of Washoe, State of Nevada.

[Endorsed]: Filed Nov. 25, 1947.

[Title of District Court and Cause.]

AFFIDAVIT OF WILLIAM G. SKELLY

State of Nevada,
County of Washoe—ss.

William G. Skelly, of lawful age, being first duly sworn, on oath states:

I have been engaged in the oil business for approximately fifty years; I was a director and was president of Pacific Western Oil Corporation for several years prior to February 26, 1947, and am a stockholder in that corporation; I am a director of Mission Corporation and have been for approximately ten years, was its president for about ten years and until October 18, 1947, and own 14,000 shares of its capital stock, two thousand shares of which are of record in my name on the books of the corporation, and twelve thousand shares of which are owned beneficially but are not of record on the books of the corporation; I am president, a director of and a stockholder in Skelly Oil Company.

I regard the Agreement of Merger among Sunray Oil Corporation, Pacific Western Oil Corporation and Mission Corporation as grossly unfair to the stockholders of Mission Corporation [177] other than Pacific Western. I am quite familiar with the assets and oil properties of Pacific Western Oil Corporation and was in close touch with the operations of that corporation while I was its president. Its oil reserves were estimated by De Golyer

and MacNaughton in connection with a merger of that corporation and George F. Getty, Inc., which became effective May 31, 1946. Pacific Western Oil Corporation and Skelly Oil Company jointly own certain oil producing properties. I am informed that on June 23, 1947, the Supreme Court of the United States handed down its decision in the case of the United States vs. The State of California, deciding that the United States is the owner of tide lands and that the State of California is not the owner thereof, and that the effect of the decision is to invalidate leases of such lands executed by the State of California. Pacific Western Oil Corporation owns or operates at least two such leases. According to Sunray Oil Corporation's Registration Statement under The Securities Act of 1933, page 45, the total value of the oil, gas and hydro carbon substances produced and sold from those lands from the inception of those leases to August 31, 1947, approximates $28,600,000. I am advised that Pacific Western Oil Corporation has a potential liability of millions of dollars in connection with this matter and that the exact amount thereof will depend upon a future court decision, and that in any event it has lost the title to its present leases. This latter will affect its oil reserves.

I am generally familiar with the assets and properties of Sunray Oil Corporation, although not to the same extent that I am familiar with those of Pacific Western Oil Corporation. I am entirely

and completely familiar with the assets of Mission Corporation. [178]

Based upon my fifty years experience in the oil business and my knowledge of the properties of Sunray, Pacific Western and Mission Corporation, my considered opinion is that if you take the merger agreement by itself without all the other deals involved, the proposal to exchange six shares of stock of Sunray Oil Corporation for one share of Mission stock is wholly unfair to Mission Corporation and that on the relative values involved, as I believe them to be, Mission shareholders will lose at least one-third of the real value of their shares. I am convinced that an appraisal by a competent disinterested appraiser, applying the same methods of valuation to the properties of thees three corporations, will demonstrate the correctness of my views.

Sunray and Pacific Western have caused various persons to make estimates or appraisal of the value of the assets of the three companies. Among these are Mr. Wasson, whom I understand has several times been engaged by Sunray to make appraisals; Mr. Kravis, who has likewise several times been engaged by Sunray to make such appraisals and is its creditor, and Messrs. Kluth and Williams, who are Getty men. I notice that all the reports bear date some days after Mission's directors met on October 18, 1947, and am not surprised that they appear to substantiate the deal The Getty Interests had made. In my opinion they have greatly overestimated the oil and gas reserves of Pacific Western and Sunray and have likewise overvalued the other assets of those corporations.

However the real vice in all these transactions is the preferential treatment The Getty Interests have procured for themselves. They take cash. There is no question as to the value of cash. The cash to be paid them and other Pacific [178] Western stockholders, together with the cost of the merger and the cost of raising this huge sum will put a great strain on the corporation surviving the member and leave it in a weakened position. It will have sold $48,000,000 worth of its assets. Mission shareholders must take common stock behind an enormous amount of debt and preferred stock. A change in economic conditions or the establishment of a large liability to the United States on the tide lands property might well make the common stock a total loss, and I think its present value is a matter of great doubt.

When I finally agreed, at the urgent request of Mr. J. Paul Getty, to become president and director of "Mission" in 1937, and later director and president of "Pacific" and George F. Getty, Inc., it was with the express understanding that he would give me a free hand in the operation of each of these companies. During all of this time J. Paul Getty and The Getty Trust installed the directors of their own choosing for each of these companies.

During most of the ten years that I have been associated with Mr. J. Paul Getty there have been constant rumors and activities concerning consolidations and mergers. Only one such merger was ever put through, that being between Pacific West-

ern Oil Corporation and George F. Getty, Inc., a wholly owned corporation of the Getty family. It was always my policy and contention that no merger of the Getty controlled companies should ever be consummated without first getting an appraisal of the properties involved by an independent appraiser of well-known reputation and experience, applying the same yardstick of appraisal to the properties of each company involved. [180]

I had no hand in the negotiations between J. Paul Getty and the Shell Oil Company (early in 1947) or between J. Paul Getty and Tide Water Associated Oil Company (March to May, 1947), when Getty was negotiating the sale of "Pacific" stock involving mergers. Both deals, I understand, were conditioned upon the merger of "Pacific," "Mission" and "Skelly." I learned about those negotiations in a round about manner. Mr. Dockweiler did tell me and the other directors of "Mission" at the Reno meeting on May 8, 1947, not to worry about the Tide Water deal, that he was certain it wouldn't be concluded. Of course, I assumed he knew because he was a director of Tide Water, a Getty Trustee, and in constant touch with J. Paul Getty. This was at the same time and in the same meeting when the board authorized the "Mission" officers to do what was necessary to effect the merger between "Pacific" and "Mission." Several weeks after this meeting the proposed merger or consolidation of "Pacific" and "Mission" was abandoned. I was told this was because an entirely new merger deal was being "cooked up" by Lloyd Gilmour (a direc-

tor of "Pacific") of Eastman, Dillon & Co., a New York banking house, and J. Paul Getty. The first definite information I had of this deal was through a conversation on May 29, 1947, with Lloyd Gilmour at Tulsa, Oklahoma. After discussing the matter briefly, I invited him to my office the following morning, which was Decoration Day. There a joint discussion was held with C. C. Herndon, senior vice president of Skelly, Mr. Gilmour and myself. Mr. Gilmour explained to Mr. Herndon and me the plan, which he had given me the evening before. It was discussed at considerable length. Both Mr. Herndon and I told him that we could not consider any merger without an appraisal by a competent well-known appraiser, using the same [181] yardstick of appraisal for all of the constituent company properties, and our assurance that there were no legal obstacles. We also told him that the finance plan seemed fantastic to us in that the debt and preferred stock structure, which he submitted in the plan, was too great and the number of common shares, which would have to be issued was too large. We definitely expressed our position that all stockholders of Skelly and Mission must be protected on their equities and be treated just as fairly as the "Getty Interests." We felt our responsibility to the small stockholders, as well as the "Getty Interests," the dominating stockholder, who held control through a series of pyramiding but actually owned only the equivalent of 23% of Skelly. Mr. Gilmour tried to sell us the idea that the debt and preferred stock structure was not fatally top-heavy but he

agreed with us that the common yardstick appraisal by an independent appraiser should, and he said would, be made and that we "would not dare to sponsor it on any other basis." He further said that the legal phase would have to be worked out satisfactorily and that he would not think of doing "the deal," as he called it, without the conditions we had expressed. The plan, which Mr. Gilmour submitted, Exhibit 1 hereto, proposed the merger of "Pacific," "Mission" and "Skelly" into Sunray, changing the name to "Skelly-Sunray." Under the plan of merger, stockholders of "Mission" and "Pacific" were to be treated exactly alike and for each share of stock they were to receive $20 par value of 4% prior preferred stock, $20 par value of 4½% convertible junior preferred stock, and two shares of common stock of Skelly-Sunray. The plan also contemplated the sale of the Tide Water stock at $25 a share and thereby incurring approximately eight million dollars in [182] capital gains tax. Upon the consummation of the merger, the "Getty Interests" would receive the following securities of the merged company:

4% Prior Preferred	$23,400,000
4½% Conv. Junior Preferred	23,400,000
Common Stock—2,340,000 shs. @ $12	28,080,000
Total—$64 per sh. of Pacific Western	$74,880,000

This plan also provided that the Gettys would receive $46,800,000 "in cash shortly after the closing. This cash would be realized, free of risk, through (a) tender of all the preferred of both

classes, which would realize a minimum of half in cash at par, and (b) sale of the balance to Eastman, Dillon & Co. and Associates for private placement and/or public offering. The 'Getty Interests' would not cause a certificate of merger to be filed until they were satisfied in regard to their realization of cash on the preferred stock not liquidated through tender." The Gettys would thus end up with 2,340,000 shares or about 19% of the common stock.

It was because of this obvious preferential treatment of the Gettys contained in the plan, Exhibit 1, that Mr. Herndon and I were insistent and determined to do our utmost to protect the stockholders of "Mission" and "Skelly," other than the dominating stockholder, and see that they had the same opportunity as the Gettys to realize cash.

Throughout all the merger plans, deals and schemes "cooked up" by J. Paul Getty by and for the Getty Interests, it was evident that he was trying to gain for the Getty Interests a much favored position at the expense of the minority stockholders. At all times he was seeking through devious means or schemes to avail himself of cash at the expense and without the [183] consideration of the remaining stockholders. It was apparent that the surviving stockholders would have to bear the tremendous costs of the merger, involving many millions of dollars, with their only chance of getting cash for their securities being through a sale on the stock exchange, taking all the risk of the market. A few days after the meeting with Mr. Gilmour, he called

me from New York City to discuss this plan and I again reiterated the position Mr. Herndon and I had taken on Decoration Day.

During this period Mr. Clarence Wright, president of Sunray, who lives in Tulsa, approached me several times about a merger of "Pacific," "Mission" and "Skelly" into Sunray. I told him that I had no right and would not oppose the Gettys selling out their Pacific Western stock but if it was contingent upon a merger of any character, involving "Mission" or "Skelly," I would insist on a fair basis, using a common independent appraisal of all property and assets, and that such a plan must be fair and equitable to all stockholders. I said I would oppose any plan or scheme that would not afford all stockholders the same treatment that the Gettys received. Most of the statements he made to me were indefinite as to basic plan, ratios of exchange, financing and the amount of common stock to be issued. There was always an apparent disregard for the minority stockholders, other than the interests of the Gettys.

During this time I heard time and again that the deal was off, then on and off again.

On July 24, 1947, a directors meeting of "Skelly" was in session at Tulsa, Oklahoma. During the meeting I was called by two different newspaper reporters, who asked for a statement pertaining to rumors regarding a merger between [184] "Pacific," "Mission," "Sunray" and "Skelly." In the presence of all the directors and with their consent,

I told both of these reporters that there was not one word of truth so far as I knew. The other directors of Skelly, including Messrs. Dockweiler, Williams and Kluth, were present, heard the denial, knew it was to be published and carried by Associated Press, and acquiesced therein. Mr. Wright, president of "Sunray," was asked for a statement and he made a similar denial. On at least one other occasion later on, I made a similar denial to the press, and at about the same time Mr. Wright, who I understand was visiting in Los Angeles, likewise made a denial of any merger. I had not been consulted by Mr. J. Paul Getty, Mr. Dockweiler or anyone representing the "Getty Interests," nor had I been asked to participate in any negotiations. I was president and director of "Mission," the president and director of "Skelly," and we were never asked, nor was it ever discussed at our directors meetings, even though Messrs. Dockweiler, Williams and Kluth were directors, nor did we ever pass resolutions, authorizing anyone to negotiate a merger with "Sunray," Eastman Dillon & Co. or anyone else. The only information I ever gained regarding the rumors that were afloat in the newspapers, and gossip concerning the latest merger plan of J. Paul Getty, was when Clarence Wright, president of "Sunray," would feel me out and attempt to sell me on the idea of merger.

About August 7th, I received a letter, Exhibit 2, from Arthur M. Boal, "Mission" director, stating that he heard definitely that the "Sunray" proposal

was off because of the objection of George Getty II. A few days later (August 11, 1947) I wrote him, Exhibit 3, stating:

> "I have been tormented with so [185] much merger chaff in the last three or four or five years that it is becoming a real nuisance, and I will be glad of the day when all of this falderal is behind us."

Subsequently, I received another letter from Mr. Boal (August 15, 1947), Exhibit 4, stating:

> "I do not know what is happening in connection with Paul Getty's efforts to sell his Pacific Stock. I did learn indirectly that George Getty II said No as to the Sunray deal. They put a lot of pressure on him but were not able to move him. Now they are cooking up a new deal. Whether it involves merely Paul Getty's stock or Paul Getty's and the Trust I do not know."

Off and on the newspapers began broadcasting rumors that a merger was to take place between the so-called Getty controlled companies and Sunray. The stock of these companies began to turn over in large volume, especially in Sunray, indicating to me that an effort was being made by someone on the inside, working for the interest of promoters and negotiators, in order to justify certain ratios.

On one occasion, Mr. Wright told me that if a merger could be put through, it would get J. Paul Getty "off my neck." He stated that I would be

the chairman of the board of the new corporation and that I "could write my own ticket." I told him that I wasn't interested but when it came to a merger, involving "Mission" or "Skelly," I thought I should be kept fully advised of any plans or matters affecting their status. I felt that as president and director and manager of these two companies, [186] it was my duty to all the stockholders to fairly protect their interests and investments.

I told Mr. Wright that when I started Skelly Oil Company in 1919, I had turned in my personal properties and holdings and have spent the past 28 years, together with my associates, in developing a worthwhile, integrated oil company with large oil and gas reserves. Mr. Herndon and I, working together, had organized and developed an enviable organization of fine, capable men and women as associates and employees, and a splendid group of stockholders who depended on us and who have stayed with the company, whose securities have paid them fairly good dividends, while at the same time, built tremendous values behind these securities, and that no merger would be considered by Mr. Herndon or me unless it was based upon a common yardstick appraisal of all the constituent companies by an independent recognized reliable appraiser. I, naturally, was interested in following up rumors of mergers involving these companies because I felt a deep sense of responsibility to all the stockholders and employees of "Mission" and "Skelly," and further because I had a stock ownership in "Mission" and "Skelly" as well as "Pacific."

In the latter part of September, I received a telephone call from Mr. Wright, who was in Los Angeles, advising that Mr. Herndon and I should come out there immediately in order to protect our interests. During the conversation, I told Mr. Wright no merger plan had been presented to us and that we had no definite information pertaining to any proposed merger being existent. On Sunday evening, October 5th, Mr. Dockweiler telephoned me from California. A contract had been signed with "Sunray" and a merger of "Pacific," "Mission," "Skelly" and "Sunray" was involved. He wanted me to call a directors [187] meeting of "Mission" and "Skelly." I told him that a notice had already gone out for a "Mission" directors meeting, to be held in Tulsa on October 18, 1947, and that a "Skelly" directors meeting would be held October 17th, followed by the annual stockholders meeting on October 18th, and that since no plan of merger had been presented to me, I was not in a position to call an earlier "Mission" or "Skelly" directors meeting. Two days later, on October 7th, Mr. Wright came to my office and left the following three documents: (1) Photostat copy of an agreement, dated October 4th, between J. Paul Getty and the Getty Trustees to sell their 85% stock interest of "Pacific" to "Sunray," (2) Photostat copy of an agreement relating to financing between "Sunray" and Eastman, Dillon & Co., (3) A printed copy of a voluminous "Agreement of Merger" between "Sunray," "Pacific," "Mission" and

"Skelly." He asked me to examine these documents and arrange a meeting with his group. Mr. Herndon and I, in examining these documents, noted that the ratios of exchange on page 25 of the agreement of merger were deleted, apparently by a sharp instrument (Exhibit 5). Mr. Herndon telephoned Mr. Wright for additional copies of these documents in order to expedite the examination and arrange an earlier meeting. On the afternoon of October 8th, additional copies were received, but we found upon examination that the conversion ratios of stock exchange were likewise deleted (Exhibits 6 and 7). A meeting was held in the "Skelly" directors room at 11:00 a.m. on October 9th, at which time and place Mr. Wright, together with his vice-president, Mr. Martin, and his attorney, Mr. Talisferro, were present, representing "Sunray," Mr. B. B. Hadfield of the New York firm of Leve, Hecht & Hadfield, was present and stated that he represented J. Paul Getty, Messrs. [188] Herndon, German, Villard Martin, Achtschin and I were present, representing "Skelly." At that time Mr. Wright handed us a three-page typewritten "Plan of Purchase of Stock of Pacific Western by "Sunray" and Merger of Pacific Western, "Mission" and "Skelly" into "Sunray," (Exhibit 8). This instrument, prepared in the office of Eastman, Dillon & Co., on September 18th, also had the ratios of exchange for "Skelly" and "Mission" stocks deleted. In all of the instruments, which we had received from Mr. Wright, pertaining to the proposed merger, they had been very careful to delete

and withhold from us all information pertaining to the ratios of exchange for "Mission" and "Skelly" stock. We questioned Mr. Wright about this but he stated that he had had very little to do with the ratios and plan of merger. He stated that all that had been handled principally by Eastman, Dillon & Co. but that he understood that the bankers contemplated a ratio of about five or six shares of "Sunray" common for one of "Mission" and nine or ten shares of "Sunray" common for one of "Skelly." We tried to learn from him how these ratios had been developed but he apparently knew practically nothing about the formula or ratios of exchange. We were unsuccessful in learning anything further about the ratios or how they were developed. Mr. Wright said that on Monday, October 13th, Messrs. Lloyd Gilmour of Eastmen, Dillon & Co., Mr. Dockweiler and Mr. Petigrue, New York attorney for Eastman, Dillon & Co. and "Sunray," would be in Tulsa and available for a meeting. He stated that they knew a great deal more about the deal than he. We adjourned, agreeing to meet the following Monday. On the afternoon of Monday, October 13th, a meeting was held in the "Skelly" directors room, at which Mr. Herndon, Mr. German, Mr. Villard Martin, Mr. Achtschin [189] and Mr. Patrick, and I, representing "Skelly," and Mr. Wright, Mr. F. L. Martin, Mr. Kravis, Mr. Petigrue and Mr. Hadfield, representing J. Paul Getty, and Mr. Gilmour, a partner in Eastman, Dillon & Co., were present. A discussion was commenced concerning the proposed merger. I stated that such

a merger could not be fairly and intelligently considered without a common yardstick of appraisal by a practical, competent, well-known engineer. Mr. Herndon stated that Mr. Dockweiler and Mr. Hadfield had been in his office earlier in the day and had definitely and unequivocally agreed with him that such a merger could not go forward without a common yardstick appraisal of all the properties and underlying values. Mr. Hadfield then and there affirmed his and Mr. Dockweiler's statement made to Mr. Herndon that morning, and further said that it was true then and it is true now. Whereupon Mr. Petigrue said that it was imperative that the merger be consummated prior to December 23rd, and that there was no time for such appraisal of the properties. Mr. Herndon suggested that the Gettys should extend the time in order that a merger might be consummated on a fair and equitable basis. Mr. Petigrue and Mr. Gilmour replied that this could not be done. Because of the insistence by Mr. Herndon and myself on a common yardstick appraisal, to which Mr. Dockweiler and Mr. Hadfield had agreed, Mr. Petigrue stated that it would be necessary to drop "Skelly" from the merger plan. Mr. Petigrue then stated that they had another plan involving "Mission," "Pacific" and "Sunray." He said they had canvassed a majority of the directors of each company and found them willing to proceed on the alternate plan and without a common yardstick appraisal. This, of course, had never been presented to or discussed with me, even though I was president of [190] "Mission,"

nor had it been discussed with Mr. Hyden. I am sure it had not been discussed with Mr. Graves, who was in New York, and probably not with Mr. Boal, who did not reach Tulsa until the 16th or 17th of October. Apparently, Mr. Dockweiler, Mr. Williams and Mr. Kluth took it upon themselves to make the decisions for the "Mission" management and board of directors. I was not informed or brought into any discussions pertaining to the proposed three-company merger until the following Saturday, October 18th.

On the morning of October 17th, I received a telegram, dated the same day, pertaining to the "Mission" directors meeting previously called for October 18th. This telegram stated that the meeting was called for the purposes, among others, of "approval and execution of an agreement of merger providing that Mission Corporation, together with Pacific Western Oil Corporation, be merged into and with Sunray Oil Corporation." Even though I was still the president and executive head, I had not seen or been informed of the terms of such three-company proposed merger plan. On October 18th, about fifteen minutes before the Mission directors meeting convened, Mr. Dockweiler came to my office and stated that I "seemed to be out of step with their merger plans." He told me they intended to make some changes in the officers and wondered if I preferred to resign instead of being removed. I told him that under the circumstances and realizing my responsibility to the thirty thousand odd stockholders of "Mission," I would not resign as president. Subsequently, the directors

meeting convened and a telegraph resignation of director B. I. Graves, was presented and accepted. Mr. Staples (president of Pacific Western) was elected a director by the vote of Messrs. Dockweiler, Kluth, Boal and Williams. Thereupon the board proceeded to oust me as president and [191] elect Mr. Staples. After some routine business the meeting recessed at 10:55 a.m.

About 3:00 o'clock in the afternoon, the "Mission" directors reconvened to "approve" the plan of merger. The plan of merger was presented by Messrs. Hecht and Hadfield, J. Paul Getty's attorneys. I requested permission to likewise be represented by personal counsel and called in Mr. Villard Martin and Mr. Joseph A. Patrick. Apparently, all the directors were willing to accept and approve the merger without discussion. There were no valuations or engineers' reports available for our consideration. I asked many questions pertaining to the reserves of the various companies, the valuations, the methods used in arriving at the ratios, and learned that these had apparently all been determined by Eastman, Dillon & Co. None of the directors, other than possibly Mr. Dockweiler, had any apparent knowledge of the new merger plan more than two or three days prior to this meeting. Mr. Hyden and I saw for the first time at the meeting that afternoon the proposed three-company merger plan. We had not been included in any discussions nor given any information about this plan prior to the afternoon meeting. I presented a resolution (Exhibit C to Amended Bill of Complaint) to recess the meeting until November 15th, in order

that the board might retain reliable disinterested counsel, who could render a written opinion regarding the legality of the merger agreement, to permit the directors to obtain necessary information relating to the fairness of the terms and conditions, and concerning a common yardstick appraisal of the values of the constituent corporations. All Getty controlled directors voted against this resolution. Mr. Hyden and I voted in favor of it. I proposed a second resolution to recess the meeting [192] until the following Monday, October 20th, at 10:00 a.m., in order that the merger agreement and proxy statement could be submitted to independent counsel, so that the directors might be fully advised as to the legality and their possible liability and responsibility in connection therewith. Mr. Boal stated that he had the day before, on October 17th, been retained as counsel for "Mission" to advise the board on the legality and fairness of the merger. He had been retained by Mr. Staples, although he (Mr. Staples) was not then an officer or director of "Mission."

This second resolution was likewise voted down by the Getty controlled directors. Mr. Hyden and I voted in the affirmative.

I explained to the directors that in my opinion this was grossly unfair to the minority stockholders of "Mission" and that the ratios of exchange were neither fair nor equitable. I could see no reason why the Gettys should get cash and walk away, leaving the minority stockholders of "Mission" to bear the expense and brunt of the tremendous costs necessary for the proposed merger. The

Getty Interests were taking cash and compelling the stockholders of "Mission" to take common stock behind millions of dollars of preferred stocks, debentures, bank notes and other liabilities. Mr. Dockweiler, a Getty Trustee, after stating to the meeting that he believed that the proposed merger under all conditions and circumstances was fair to all of the stockholders of Mission Corporation, withdrew from the meeting. This is stated in the minutes of the meeting which are in evidence in this case. Thereupon the Getty controlled directors approved the merger over the objections of Mr. Hyden and myself.

I have received, and am still [193] receiving, many letters and proxies from "Mission" stockholders and their attorneys and representatives, stating their opposition to the merger and approval of my efforts to stop it. These represent over 100,000 shares of stock in Mission Corporation.

The Gettys deal for $68 a share for their stock is $16 a share above the market price of the stock at the time the Gettys, Eastman, Dillon & Company and "Sunray" agreed upon the terms of this transaction. This represents a profit above market price of over $18,600,000 to the Gettys and of over $3,300,000 to the other Pacific Western stockholders, or a total of over $22,000,000. If the costs to the surviving corporation, fees, commissions, and expenses incident to raising this money, and the estimated capital gains taxes arising through sale of the Tide Water stock to pay the Gettys, totaling approximately $14,500,000, are added, there is a total of approximately $36,500,000 which the stockholders of

the surviving corporation must bear for the benefit of the Gettys and the other Pacific Western stockholders. Based upon these figures, my pro rate part of the loss due to the Getty profit above market value of their stock totals over $186,000; and if the other 15% of the Pacific Western stockholders accept cash for their stock, this loss will total over $220,000. My proportionate of the $14,500,000 figure would appear to be approximately $147,500. The total of these losses to me alone is approximately $365,000, exclusive of loss in value in my investment, an investment which now has less than $200,000 ahead of my stock and that of all other common stockholders of Mission, an investment which paid during the year 1946 dividends of $1.45 per share, and during the year 1947 dividends of $1.50 per share, an investment which, based upon my knowledge the underlying assets, is expected to pay equal if not greater dividends [194] in the future. With something like $125,000,000 prior indebtedness, debentures, and preferred stock ahead of it in the surviving corporation, the prospects for a return, much less a substantial return, on the same investment in the surviving corporation are indeed dreary.

Further affiant saith not.

WILLIAM G. SKELLY.

Subscribed and sworn to before me this 24th day of November, 1947.

[Seal] CATHERINE TWEEDT,

Notary Public in and for the County of Washoe, State of Nevada. [195]

EXHIBIT 1

PLAN OF MERGER OF PACIFIC WESTERN, MISSION, SKELLY AND SUNRAY

1. Pacific Western, Mission and Skelly are merged into Sunray, whose name is changed to Skelly-Sunray.

2. Terms of merger.

a. Each share of Pacific Western is converted into $20 par value of 4% prior preferred stock ($100 par), $20 par value of 4½% convertible junior preferred stock ($100 par), and two shares of common stock of Skelly-Sunray.

b. Each share of Mission is converted into $20 par value of 4% prior preferred stock ($100 par), $20 par value of 4½% convertible junior preferred stock ($100 par), and two shares of common stock of Skelly-Sunray.

c. Each share of Skelly is converted into nine shares of common stock of Skelly-Sunray.

d. Each share of Sunray preferred is converted into ½ share of 4% prior preferred stock and ½ share of 4½% junior convertible preferred stock of Skelly-Sunray, and each share of Sunray common stock is converted into one share of common stock of Skelly-Sunray.

e. Skelly-Sunray invites tenders up to $27,500,000 par value of its 4% prior preferred stock and up to $27,500,000 of its 4½% convertible preferred stock at par, and states inten-

tion of calling untendered stock up to an amount of tendered and called stock of $27,500,000 par value of each issue. This will retire about 49.5% of the $111,000,000 of new preferred stock initially issued under the merger. The funds are raised as follows:

1. Sale of 1,924,000 shs. Tidewater Common @ 25	$48,000,000
2. Sale of Hotel Pierre	5,000,000
3. Treasury cash	2,000,000
	$55,000,000

A capital gains tax of approximately $8,000,000 would be incurred by reason of the sale of the Tidewater common and the Pierre, which would be reflected in an increase of the same amount in accrued taxes on the balance sheet.

3. Resulting capitalization:

	%*	Amount
Installment notes**	6.1	$15,400,000
Long term bonds**	12.0	30,000,000
4% prior preferred stock ($100)	11.1	28,000,000
4½% convertible junior preferred stock ($100)	11.1	28,000,000
Common stock	59.7	12,500,000 shs.

*Based on par for debt and preferred stock and $12 per share for common stock.

**Same debt as is now outstanding. If additional working capital is needed, funded debt could be increased.

4. Earnings coverage (Taking Skelly and Sun-

ray earnings at rate of first quarter of 1947 and estimating net income of Pacific Western Oil operations at $1,300,000):

Interest ($1,130,000)	Approx.	19.9 times
Interest and prior preferred dividends ($2,250,000)	"	10.0 "
Interest and all preferred dividends ($3,510,000)	"	6.4 "
Per share of common stock		$1.51*

*If convertible preferred is convertible @ $15 per share, full conversion would reduce this figure to $1.41.

5. Asset Values (Sunray and Skelly at book; Pacific Western oil properties at $18,000,000):

Net Tangible ($194,000,000)	
Funded debt	415%
Funded debt and prior preferred	260%
Funded debt and all preferred	190%
Per share of common	$7.30
Net Current ($21,000,000)	
Funded debt	45%
Funded debt and prior preferred	28%
Funded debt and all preferred	20%

6. Junior Market Equity (Common @ $12)

Funded debt	440%
Funded debt and prior preferred	240%
Funded debt and all preferred	146%

ETH:ss
May 26, 1947.

REALIZATION BY GETTY INTERESTS FROM MERGER OUTLINED IN MEMORANDUM OF MAY 26, 1947

1. Getty interests own approximately 1,170,000 shares of Pacific Western common stock.

2. Upon consummation of the merger, Getty interests would receive the following securities of the merged company:

"4% Prior Preferred	$23,400,000
4½% Conv. Junior Preferred	23,400,000
Common Stock—2,340,000 shs. @ $12	28,080,000
Total—$64 per sh. of Pacific Western	$74,880,000"

3. Of the above amounts, about $40 per share of Pacific Western, or $46,800,000, would be realized in cash shortly after the closing. This cash would be realized free of risk through (a) tender of all the preferred of both classes which would realize a minimum of half in cash at par, and (b) sale of the balance to Eastman, Dillon & Co. and associates for private placement and/or public offering. The Getty interests would not cause the certificate of merger to be filed until they were satisfied in regard to their realization of cash on the preferred stock not liquidated through tender.

4. The Getty interest would hold 2,340,000 shares of common, or about 19% of the outstanding stock. Each rise of $1 a share in the market price of this active listed stock over $12 per share would mean a $2 per share higher price on the Pacific Western stock formerly held.

ETH:ss

May 26, 1947.

EXHIBIT 2

[Letterhead of Tompkins, Boal & Tompkins]

(Ingle's letter attached Mr. Skelly's stock)
(The above written in long hand on the exhibit)

August 4, 1947.

Mr. W. G. Skelly
Skelly Oil Company
Tulsa, Oklahoma.

Dear Bill:

I received a copy of a letter written to you a few days ago by Roscoe C. Ingalls. I know Mr. Ingalls quite well and he has talked to me about Skelly, Mission and Pacific Western at different times.

I have never given him any encouragement on these on the theory that the Skelly stock should be split up, or in connection with any merger of any of the companies. I merely listened to what he had to say on those questions and let it go at that.

However, Mr. Ingalls is a very fine man and is quite interested in these companies as an investor and as a broker who has advised clients to purchase these securities—particularly those of Skelly.

I have heard nothing further concerning the Mission-Pacific Western merger, although I have heard that definitely the Sunray proposal is off because of the objections of George Getty 2nd.

With best regards,

Sincerely yours,

/s/ ARTHUR M. BOAL.

AMB:ds [198]

EXHIBIT 3

August 11, 1947.

Mr. Arthur M. Boal
Tompkins, Boal & Tompkins
116 John Street
New York 7, New York

Dear Arthur:

Thanks for your letter of August 4 commenting on the Roscoe C. Ingalls letter. Naturally, I was glad to hear from Mr. Ingalls and have replied to his letter. I am always glad to hear from stockholders or anyone interested in Skelly Oil Company and try to answer them in a frank, constructive manner.

You know that our policy is to devote a lot of our talent and finances in securing added oil and gas reserves and this policy is finally showing real results. Our crude oil production currently is around 52,000 barrels net and our income from natural gas is approximately $250,000 per month, and all other branches of the business are on a comparable bases and, while I am not averse to suggestions for split-ups, etc., etc.—seriously, I would like to keep Skelly Oil Company rolling along as it has been in the past.

I have been tormented with so much merger chaff in the last three or four or five years that it is becoming a real nuisance, and I will be glad of the day when all of this falderal is behind us.

When I was asked to become president of Pacific Western, I made a trip to California and a survey

of the organization and the properties. I found a situation that was unbelievable in the affairs of company management and operations. There was no leadership and no policy, and the properties were in the worst physical condition of anything I have seen during my fifty years' experience in the oil industry . . . intrigue, incompetency, neglect and irresponsibility was the rule, and a liquidating attitude was being pursued. However, there were some very good men within the organization, who, properly placed, could be of real value, and Dave Staples was the only man who had the courage and horse-sense to lead that organization. Then, I transferred one of our most capable and practical oil men from Skelly Oil Company to take over the superintendency of properties . . . and laid down a program to rehabilitate and pursue a policy to build a real oil company, and today, I am proud to say that the Pacific Western is really a going concern and has gained the respect of other oil men on the Pacific Coast.

I know that Pacific Western, Mission and Skelly Oil Company are all on a sound, constructive basis now and, while J. Paul Getty is continually agitating the directors of Mission and Pacific Western to consolidate these two companies, nothing will come of that now because I believe Mr. Getty is more interested in selling his holdings in Pacific Western, and possibly the Trust may be interested.

With warm personal regards, I am,

Yours sincerely,

.....

WGS:ef [199]

EXHIBIT 4

[Letterhead of Tompkins, Boal & Tompkins]

August 15, 1947.

Mr. W. G. Skelly
Skelly Oil Company
Tulsa, Oklahoma.

Dear Bill:

Please accept my thanks for your letter of August 11th. Roscoe Ingalls telephoned me and said that he had had a very nice letter from you. He is a very good friend of the Skelly Oil Company, and has had some of his friends buy the stock. Some of my friends have also bought some.

I know you have done a wonderful job on Skelly Oil and have done a marvelous job for Pacific Western, and I am sure that you are going to continue to do so.

I do not know what is happening in connection with Paul Getty's efforts to sell his Pacific Western stock. I did learn indirectly that George Getty 2nd said No as to the Sunray deal. They put a lot of pressure on him but were not able to move him. Now they are cooking up a new deal. Whether it involves merely Paul Getty's stock or Paul Getty's and the Trust I do not know.

I hope to see you when you are next in New York.

If not, I hope to get to Tulsa for the Mission meeting which will be held at the time of the Skelly meeting in October.

With warmest personal regards, I am,

Sincerely yours,

/s/ ARTHUR M. BOAL.

AMB:ds [200]

EXHIBIT 5

ARTICLE V.

The manner of converting the shares of each of the Constituent Corporations into shares of the Surviving Corporation shall be as follows:

(a) Each share of old Preferred Stock of Sunray which shall be outstanding on the effective date of this agreement (including shares held in the treasury of Sunray) and all rights in respect thereof shall thereupon forthwith be converted into 1 share of 1947 Prior Preferred Stock of the Surviving Corporation. The outstanding shares of Common Stock of Sunray shall not be changed or converted as a result of the merger, and all shares of such stock outstanding on the effective date of this agreement (including shares held in the treasury of Sunray) shall be and be deemed to be shares of Common Stock of the Surviving Corporation, shall remain outstanding, shall be and be deemed to be full-paid and non-assessable and shall be subject to all the provisions of this agreement.

(b) Each share of Capital Stock of Pacific which shall be outstanding on the effective date of this agreement (except any shares held in the treasury of Pacific or owned by any other Constituent Corporation) and all rights in respect thereof shall thereupon forthwith be converted into 7/10ths of 1 share of 1947 Prior Preferred Stock of the Surviving Corporation. Any shares of Capital Stock of Pacific held in the treasury of Pacific or owned by any other Constituent Corporation on the effective date of this agreement and all rights in respect thereof shall cease to exist, the certificates therefor shall be cancelled and no shares of stock of the Surviving Corporation shall be issued in respect thereof.

(c) Each share of Capital Stock of Mission which shall be outstanding on the effective date of this agreement (except any shares held in the treasury of Mission or owned by any other Constituent Corporation) and all rights in respect thereof shall thereupon forthwith be converted into ..... shares of Common Stock of the Surviving Corporation. Any shares of Capital Stock of Mission held in the treasury of Mission or owned by any other Constituent Corporation on the effective date of this agreement and all rights in respect thereof shall cease to exist, the certificates therefor shall be cancelled and no shares of stock of the Surviving Corporation shall be issued in respect thereof.

(d) Each share of Common Stock of Skelly which shall be outstanding on the effective date of this agreement (except any shares held in the treasury

of Skelly or owned by any other Constituent Corporation) and all rights in respect thereof shall thereupon forthwith be converted into ..... shares of Common Stock of the Surviving Corporation. Any shares of Common Stock of Skelly held in the treasury of Skelly or owned by any other Constituent Corporation on the effective date of this agreement and all rights in respect thereof shall cease to exist, the certificates therefor shall be cancelled and no shares of stock of the Surviving Corporation shall be issued in respect thereof.

(e) After the effective date of this agrement, each holder of an outstanding certificate or certificates which prior thereto represented shares of stock of a Constituent Corporation (other than Common Stock of Sunray) shall surrender the same to the Surviving Corporation, and, subject to the provisions of subdivision (f) below as to fractions of shares, such holder shall be entitled upon such surrender to receive in exchange therefor a certificate or certificates representing the number of shares of stock of the Surviving Corporation into which the shares of stock of such Constituent Corporation which prior to such effective date were represented by such outstanding certificate or certificates so surrendered shall have been converted as aforesaid. Until so surrendered each such outstanding certificate shall be deemed for all corporate purposes, other than the payment of dividends, to evidence the ownership of the shares of stock of the Surviving Corporation into which the shares of stock of the Constituent Corporation which prior to such

effective date were represented thereby have been so converted. Unless and until any such outstanding certificate shall be so surrendered, no dividend payable to holders of record of stock of the Surviving Corporation as of any date subsequent to the effective date of this agreement shall be paid to the holder of such outstanding certificate with respect to the number of shares of stock of the Surviving Corporation into which the shares of stock of such Constituent Corporation which prior to such effective date were represented thereby have been converted, but upon such surrender there shall be paid to the record holder of the certificate for stock of the Surviving Corporation issued in exchange therefor the amount of dividends which has theretofore become payable with respect to the number of full shares of stock of the Surviving Corporation represented by the certificate issued upon such surrender and exchange. [201]

EXHIBIT 6

AGREEMENT OF MERGER

Between Sunray Oil Corporation (a Delaware corporation) and a majority of its directors, Pacific Western Oil Corporation (a Delaware corporation) and a majority of its directors, Mission Corporation (a Nevada corporation) and a majority of its directors, and Skelly Oil Company (a Delaware corporation) and a majority of its directors.

Merging pursuant to Section 59 of the General Corporation Law of the State of Delaware and

Section 39 of the General Corporation Law of the State of Nevada into Sunray Oil Corporation as the Surviving Corporation.

Proof of October 2, 1947.

[Notation]: Received from Wright's office, 2:15 p.m. 10/8/47. C. C. H. [202]

EXHIBIT 7

ARTICLE V.

The manner of converting the shares of each of the Constituent Corporations into shares of the Surviving Corporation shall be as follows:

(a) Each share of old Preferred Stock of Sunray which shall be outstanding on the effective date of this agreement (including shares held in the treasury of Sunray) and all rights in respect thereof shall thereupon forthwith be converted into 1 share of 1947 Prior Preferred Stock of the Surviving Corporation. The outstanding shares of Common Stock of Sunray shall not be changed or converted as a result of the merger, and all shares of such stock outstanding on the effective date of this agreement (including shares held in the treasury of Sunray) shall be and be deemed to be shares of Common Stock of the Surviving Corporation, shall remain outstanding, shall be and be deemed to be full-paid and non-assessable and shall be subject to all the provisions of this agreement.

(b) Each share of Capital Stock of Pacific which shall be outstanding on the effective date of this

agreement (except any shares held in the treasury of Pacific or owned by any other Constituent Corporation) and all rights in respect thereof shall thereupon forthwith be converted into 7/10ths of 1 share of 1947 Prior Preferred Stock of the Surviving Corporation. Any shares of Capital Stock of Pacific held in the treasury of Pacific or owned by any other Constituent Corporation on the effective date of this agreement and all rights in respect thereof shall cease to exist, the certificates therefor shall be cancelled and no shares of stock of the Surviving Corporation shall be issued in respect thereof.

(c) Each share of Capital Stock of Mission which shall be outstanding on the effective date of this agreement (except any shares held in the treasury of Mission or owned by any other Constituent Corporation) and all rights in respect thereof shall thereupon forthwith be converted into ..... shares of Common stock of the Surviving Corporation. Any shares of Capital Stock of Mission held in the treasury of Mission or owned by any other Constituent Corporation on the effective date of this agreement and all rights in respect thereof shall cease to exist, the certificates therefor shall be cancelled and no shares of stock of the Surviving Corporation shall be issued in respect thereof.

(d) Each share of Common Stock of Skelly which shall be outstanding on the effective date of this agreement (except any shares held in the treasury of Skelly or owned by any other Constituent Corporation) and all rights in respect thereof shall thereupon forthwith be converted into ..... shares

of Common Stock of the Surviving Corporation. Any shares of Common Stock of Skelly held in the treasury of Skelly or owned by any other Constituent Corporation on the effective date of this agreement and all rights in respect thereof shall cease to exist, the certificates therefor shall be cancelled and no shares of stock of the Surviving Corporation shall be issued in respect thereof.

(e) After the effective date of this agreement, each holder of an outstanding certificate or certificates which prior thereto represented shares of stock of a Constituent Corporation (other than Common Stock of Sunray) shall surrender the same to the Surviving Corporation, and, subject to the provisions of subdivision (f) below as to fractions of shares, such holder shall be entitled upon such surrender to receive in exchange therefor a certificate or certificates representing the number of shares of stock of the Surviving Corporation into which the shares of stock of such Constituent Corporation which prior to such effective date were represented by such outstanding certificate or certificates so surrendered shall have been converted as aforesaid. Until so surrendered, each such outstanding certificate shall be deemed for all corporate purposes, other than the payment of dividends, to evidence the ownership of the shares of stock of the Surviving Corporation into which the shares of stock of the Constituent Corporation which prior to such effective date were represented thereby have been so converted. Unless and until any such outstanding certificate shall be so surrendered, no divi-

dend payable to holders of record of stock of the Surviving Corporation as of any date subsequent to the effective date of this agreement shall be paid to the holder of such outstanding certificate with respect to the number of shares of stock of the Surviving Corporation into which the shares of stock of such Constituent Corporation which prior to such effective date were represented thereby have been converted, but upon such surrender there shall be paid to the record holder of the certificate for stock of the Surviving Corporation issued in exchange therefor the amount of dividends which has theretofore become payable with respect to the number of full shares of stock of the Surviving Corporation represented by the certificate issued upon such surrender and exchange. [203]

EXHIBIT 8

"Received from C.H.W. 11 a.m., 10/9/47"

(The above written in long hand on the exhibit)

PLAN OF PURCHASE OF STOCK OF PACIFIC WESTERN BY SUNRAY AND MERGER OF PACIFIC WESTERN, MISSION AND SKELLY INTO SUNRAY

1. Sunray purchases 1,174,000 shares of Pacific Western Common Stock from Paul Getty and the Trust at $68 per share, or $79,832,000.

2. Sunray offers to buy the remaining 198,000 shares of Pacific Western Common Stock from the

minority stockholders at $68 per share or $13,464,000.

3. Pacific Western, Mission and Skelly are merged into Sunray, whose name is changed to Skelly-Sunray under the following plan of merger:

A. Each share of Pacific Western Common Stock not sold to Sunray pursuant to the above offer is converted into $70 par value of 4½% Prior Preferred Stock ($100 par) of Skelly-Sunray.

B. Each share of Mission Common Stock is converted into (....) shares of Skelly-Sunray Stock.

C. Each share of Skelly Common Stock is converted into (....) shares of Skelly-Sunray Common Stock.

D. Each share of Sunray Preferred Stock is converted into one share of 4½% Prior Preferred Stock ($100 par) of Skelly-Sunray, and each share of Sunray Common Stock is converted into one share of Skelly-Sunray Common Stock.

E. If all of the minority stockholders of Pacific Western accept the above-mentioned $68 cash offer, $93,296,000 will have to be raised to be paid at the closing to Paul Getty, the Trust, and the Pacific Western minority stockholders. If none of the minority stockholders accept the offer, $79,832,000 will have to be raised. In either event, the funds will be raised through sale of the 1,919,347 shares of

Tide Water Common Stock now owned by Pacific Western and Mission, and through public offering or private placement of 3% long term debt and 4½% Convertible Preferred Stock ($100 par) of Skelly-Sunray as follows:

	All Minority Stockholders Accept	No Minority Stockholders Accept
Sale of Tide Water Common Stock at 25	$48,000,000	$48,000,000
Sale of Long Term Debt at 100 net to Co.	16,000,000	16,000,000
Sale of Conv. Pfd. Stock at 100 net to Co.	29,296,000	15,832,000
	$93,296,000	$79,832,000

To whatever extent the minority stockholders of Pacific Western Common Stock accept the $68 cash offer, the amount of 4½% Prior Preferred Stock issued to them will be decreased and the amount of 4½% Convertible Preferred Stock sold by the company will be increased. For instance, if holders of half of the Pacific Western Common Stock owned by the minority stockholders accept the case offer, the above table would become as follows:

Sale of Tide Water Common Stock at 25	$48,000,000
Sale of Long Term Debt at 100 net to Co.	16,000,000
Sale of Convertible Preferred Stock at 100 net to company	22,564,000
	$86,564,000

4. The resulting capitalization on the basis of the two extremes in regard to acceptance of the cash offer would be as follows:

		All Minority Stockholders Accept		No Minority Stockholders Accept	
	%*	Amount	%*	Amount	
Present Installment Notes	5.6	$15,400,000	5.6	$15,400,000	
Present Long Term Debentures	10.9	30,000,000	10.9	30,000,000	
New Long Term Debt	5.8	16,000,000	5.8	16,000,000	
4½% Prior Preferred Stock	9.8	27,000,000	14.8	40,860,000	
4½% Conv. Preferred Stock	10.7	29,296,000	5.7	15,832,000	
Common Stock	57.2	13,070,000	Sh. 57.2	13,070,000	Sh.

*Based on par for debt and Preferred Stocks and $12 per share for Common Stock.

5. Earnings Coverage (Taking Skelly and Sunray earnings at rate of second quarter of 1947, estimating net income of Pacific Western's oil properties at $1,300,000 per annum and estimating net income of Getty Realty at $720,000 per annum.)

	All Minority Stockholders Accept	No Minority Stockholders Accept
Interest	approximately 20.1 times	20.1 times
Interest & Pr. Pfg. Divs	" 11.4 "	9.4 "
Interest & All Pfd. Divs	" 7.8 "	7.8 "
Per share of Common Stock	$2.17*	$2.18*

*If the Convertible Preferred is convertible at $15 per share, full conversion would reduce these figures to $1.97 and $2.04 respectively.

6. Asset Values (Sunray and Skelly at book; Pacific Western oil properties at $20,000,000, Hotel Pierre at $2,570,000). [205]

	All Minority Stockholders Accept	No Minority Stockholders Accept
Net Tangible ($195,000,000)		
Funded Debt	310%	310%
Funded Debt and Prior Pref.	218%	189%
Funded Debt and All Pref.	164%	164%
Common Stock	$5.80	$5.80
Net Current ($21,000,000)		
Funded Debt	33%	33%
Funded Debt and Prior Pref.	23%	20%
Funded Debt and All Pref.	18%	18%
7. Junior Market Equity (Common at $12)		
Funded Debt	340%	340%
Funded Debt and Prior Pref.	208%	168%
Funded Debt and All Pref.	131%	131%

9/18/47. ETH:G

[Letterhead Thatcher, Woodburn and Forman]

November 25, 1947

Hon. Roger T. Foley
United States District Judge
Carson City, Nevada

Re: Skelly vs. Mission Corporation
Civil No. 669.

Dear Judge Foley:

Since the filing of the affidavits in the above-entitled case, Mr. Skelly has received the enclosed telegram which bears directly upon the statements made by counsel for the defendant Mission Corporation that the Department of Justice had approved the merger of the three corporations.

With your kind permission we wish to incorporate this telegram and make this telegram a part of the affidavit of William G. Skelly on file in this action.

A copy of the telegram and of this letter is being sent to opposing counsel.

Yours sincerely,
/s/ JOHN P. THATCHER.

jpt:mlr
enc. 1 [207]

[Western Union Telegram]

1947 Nov 25 PM 2 03

T B 15
T.WA365 PD-SH Washington DC 25 44 2P

W. G. Skelly—
Riverside Hotel Reno Nev—

I understand that the attorneys for Sunray Oil Company and their associates have made the statement that the Department of Justice has approved the merger of Pacific Western, Mission Corporation, Sunray and Skelly. Attorney General Clark informed me this morning and authorized me to state to you that they had not approve this merger but were deferring final decision pending the outcome of your stockholders' suits in the District Court of Nevada and of Southern California. He further stated that when these cases were concluded he would personally review the evidence, the law, and the facts, including the record made in your two stockholders suits, and only after so doing would make a determination as to whether or not there was a violation of the Clayton act—

BURTON K. WHEELER.

[Endorsed]: Filed Nov. 25, 1947. [208]

[Title of District Court and Cause.]

AFFIDAVIT OF HAROLD C. STUART

State of Nevada,
County of Washoe—ss.

Harold C. Stuart, of lawful age, being first duly sworn, on oath states:

I am a stockholder owning twenty (20) shares of capital stock of Mission Corporation and on this 24th day of November, 1947, I examined the stockholders minutes for the past ten years as exhibited to me by the corporation's secretary, Robert Z. Hawkins. I found that at the following annual meetings the number of shares represented and the number of shares outstanding as follows:

Date	Number of Shares Present and By Proxy	Number of Shares Outstanding
May 13, 1937	1,112,776	1,399,345
May 12, 1938	1,014,237	1,379,545
May 11, 1939	1,078,582	1,379,245
May 9, 1940	1,028,815	1,378,645
May 8, 1941	1,016,405	1,375,145
May 14, 1942	1,042,830	1,375,145
May 13, 1943	998,063	1,375,145
May 11, 1944	1,027,283	1,375,145
May 10, 1945	1,011,509	1,375,145
May 8, 1946	976,931	1,375,145
May 9, 1947	1,044,999	1,375,145

Further Affiant saith not.

HAROLD C. STUART.

Subscribed and sworn to before me this 24th day of November, 1947.

[Seal] ETHEL HANNA,
Notary Public in and for the County of Washoe, State of Nevada.

[Endorsed]: Filed Nov. 25, 1947. [210]

[Title of District Court and Cause.]

AFFIDAVIT OF THOMAS A. J. DOCKWEILER

State of California,
County of Los Angeles—ss.

Thomas A. J. Dockweiler, being first duly sworn, deposes and says:

I am an attorney and counselor-at-law having my office in the City of Los Angeles, State of California, and having been such attorney and counselor-at-law for more than thirty-two (32) years. I am a resident and citizen of the State of California, a member of the State Bar of California, duly licensed to practice in all of the courts of such State, the United States Supreme Court, the United States Court of Appeals for the Ninth Circuit and the United States District Court for the Southern District of California.

I am one of the two trustees of the trust created and provided for in that certain Declaration of Trust dated December 31, 1934, in which Sarah C. Getty is named Trustor and J. Paul Getty the original trustee. The other trustee of said trust now serving with me is George Franklin Getty II, the son of J. Paul Getty. [211]

The entire corpus of the above trust, of which I am one of the trustees, consists of approximately fifty-one per cent (51%) of the outstanding stock of Pacific Western Oil Corporation (hereinafter referred to as "Pacific"); there are no other assets in trust.

In March of this year Paul Getty and myself and my co-trustee of the above trust received a proposal from Tide Water Associated Oil Company (hereinafter referred to as "Tide Water") to purchase our stock holdings of Pacific at $68.00 per share subject to Tide Water obtaining a clearance from the Anti-Trust Division of the Department of Justice. The Department of Justice refused to approve the acquisition of the controlling Pacific stock by Tide Water and the proposal was abandoned.

Subsequent to the abandonment of the Tide Water proposal I learned from Paul Getty that he had been approached on behalf of Sunray Oil Corporation (hereinafter referred to as "Sunray") with another proposal for the acquisition of the Pacific stock held by the trust and himself. In June Sunray made a proposal whereby Paul Getty and the trust could receive $58.00 per share cash for their stock, conditioned upon a merger of Pacific, Mission Corporation (hereinafter referred to as "Mission") and Skelly Oil Company (hereinafter referred to as "Skelly") into Sunray and based upon certain other conditions. The trustees, however, determined that $58.00 per share was an inadequate consideration for the stock of Pacific owned by the trust and rejected the offer. There then ensued negotiations which resulted in an offer of $68.00 per share cash, which after a great deal of consideration was found to be acceptable to the trustees. This offer, too, was conditioned, among other things, upon Sunray being able to work out with the managements of Pacific,

Mission and Skelly a merger of those companies with Sunray upon fair and equitable terms and the approval of such merger by the respective stockholders of all the corporations. The contract of October 4, 1947, a copy of which is annexed to the complaint as [212] Exhibit A, was prepared, setting forth the agreement of the parties and was executed by Paul Getty, my co-trustee and myself as trustee, and Sunray.

One of the conditions to the contract, insisted upon by Paul Getty and the trustees, was that the other stockholders of Pacific be afforded an opportunity to sell their stock at the same price as Paul Getty and the Getty Trust. All of the parties to the contract were in complete agreement in expressing the necessity that any merger plan which should be submitted to the stockholders of the several corporations for their approval would have to be fair and equitable in all respects to the stockholders of all of the corporations.

I have never been a director of Pacific, but because of the large amount of stock which the trust had in said company I have kept in close touch with its affairs. I have been a director of Mission since about January, 1936, which was not long after the organization of that corporation, and which was more than five (5) years prior to the time I became a trustee of the above-mentioned trust. I was sole trustee of the above trust from September, 1941, to July, 1946, when George Franklin Getty II qualified as my co-trustee.

During the pendency of the negotiations with Sunray, I advised Messrs. D. T. Staples, Emil Kluth and Fero Williams of such negotiations and of the possibility that if an agreement were made among the trustees, Paul Getty and Sunray, a proposal for merger would probably be submitted to the respective Board of Directors. During the negotiations I was advised that the initial bases of exchange was between five and six shares of Sunray for each share of Mission, and between nine and ten shares for each share of Skelly. I did not investigate into the fairness of the bases of exchange at such time but they did not seem out of line inasmuch as the stock of Sunray on the New York Stock Exchange was selling at the time in [213] excess of $10.00 per share and the stock of Mission was selling on the New York Stock Exchange in the middle 30's and the stock of Skelly in the middle 70's.

After the execution of the contract of October 4th (Exhibit A attached to the complaint) I discussed further with Messrs. Staples. Kluth and Williams the basis for exchange and the various factors which should be taken into consideration in determining the fairness of any basis.

I learned from C. H. Wright, President of Sunray, that he had been in communication with Mr. Skelly concerning the progress of the negotiations.

After the agreement of October 4th was signed, I was able to reach Mr. Skelly the next day and then told him what had been done and requested Mr. Skelly to call a meeting of the Board of Directors

of Mission to consider questions of a merger and advised him that Mr. Hadfield, Mr. Paul Getty's counsel, would be in Tulsa to consult with him as to matters which would have to be gone into in considering a possible merger. Mr. Skelly was definitely hostile over the telephone and gave me no definite answer to my request to call a meeting of the Board of Directors of Mission Corporation.

I proceeded to Tulsa in the middle of that week, arriving there on October 11th. I learned from Mr. Hadfield and Mr. Wright that Mr. Skelly was hostile in talking to them and had indicated a definite opposition to any merger or the consideration thereof. I understand he had asked to defer further discussions until my arrival in Tulsa. I met with Mr. Skelly on the morning of October 13th and the information I had received from Messrs. Hadfield and Wright was corroborated. Mr. Skelly was definitely hostile and indicated to me a complete lack of any disposition to give serious consideration to the working out of a merger.

On October 13th, after I saw Mr. Skelly, I was advised that because of Mr. Skelly's attitude it had been decided to eliminate [214] Skelly from the merger. The same business advantages could substantially be obtained without the inclusion of Skelly inasmuch as it would become a subsidiary of the merged company and its business activities could be integrated with the merged company.

A meeting of the Board of Directors of Mission had been called to be held on October 18th. Mr. Skelly had completely disregarded my request to

call an earlier meeting for the purpose of considering a merger, although I had endeavored to impress upon him the necessity for urgency inasmuch as one of the conditions to the agreement of October 4th was that the sale would have to be made by December 23, 1947, and the sale itself was was conditioned upon the merger. In the week of October 13th I endeavored to get Mr. Skelly to give notice to the directors that at the meeting called for October 18th consideration would be given to the possible merger, but he again failed to accede to this accede to this request. Because of Mr. Skelly's persistent failure to give the notice as President of Mission, it was finally necessary for three directors to give such notice as is permitted by the by-laws of the corporation. All of my attempts during the week of October 13th to enter into discussions with Mr. Skelly as to merger terms, etc., met with dilatory responses on his part. He continued to display an attitude of hostile objection to any merger and evidenced a persistence in refusing to consider the merits of the merger or to determining whether a ratio of six to one which was then being proposed by Sunray was a fair and equitable one for the stockholders of Mission. Meanwhile other directors of Mission had come to Tulsa and proceeded to make an exhaustive, extensive and intensive investigation into pertinent data to determine the advisability and feasibility of a merger and the fairness of the terms being proposed. I met with such directors and discussed many questions concerning the merger with them. Mr. Boal, the attorney for Mission, had received a copy of the proposed merger agree-

ment and went over the proposed terms of the merger with [215] a view to advising the directors and the corporation concerning all legal questions.

Mr. Hyden advised me, in effect, that inasmuch as he was an employee of Skelly Oil Company, working under Mr. Skelly, he could not oppose or vote against Mr. Skelly. It was suggested to Mr. Hyden that under the circumstances, in order to save himself embarrassment, he might resign as a director of Mission.

In advance of the meeting of October 18th the directors, other than Messrs. Skelly, Hyden and Boal, were in constant communication with each other. It was decided that Mr. Skelly was definitely hostile to a merger and would not give his sincere cooperation to a consideration of the proposed merger or merger terms; that in order to get a fair and expeditious consideration of the proposed merger it was essential to remove Mr. Skelly as President of Mission. Accordingly, at the meeting of October 18th he was removed and Mr. Staples was substituted as President.

While I was interested in the sale of the stock of the trust, I was also keenly conscious as an attorney and counselor-at-law that no merger should be considered or submitted to the stockholders unless the basis of exchange of the stock of the companies involved was fair and equitable to the stockholders of all of the corporations. I also realized that as a director of Mission I owed the same duty to each and every stockholder and that it was incumbent upon me not to advocate consideration of any merger that was not fair to all the stockholders.

At the time the proposed merger came before the Board, I did not vote for or against it for the reason that I thought it was better to err upon the side of caution and not vote, in view of my position as a trustee selling the stock held by the trust, although I did not believe, and do not believe, I was technically or legally disqualified. I had, however, satisfied myself before the meeting that the basis of exchange was fair, otherwise I would [216] not have been a party to the transaction.

I will not endeavor to set forth at length facts which were considered by me in concluding that the terms of the proposed merger were fair, as I understand they will be set forth in detail in the affidavits of Messrs. Kluth and Williams, which are to be filed and served.

/s/ THOMAS A. J. DOCKWEILER.

Subscribed and sworn to before me this 19th day of November, 1947.

[Seal] /s/ ELLEN WERTZ,
Notary Public in and for Said County and State.

My Commission Expires Sept. 29, 1950.

Service by copy admitted November 20, 1947.

/s/ WM. WOODBURN,
One of Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 20, 1947. [217]

[Title of District Court and Cause.]

AFFIDAVIT OF GEORGE A. HAMMER

State of New York,
County of New York—ss.

George A. Hammer, residing at #1 Gracie Square, New York City, being duly sworn, deposes and says:

I am and have been engaged in the real estate business for the past twenty years. I have been a licensed real estate broker since 1931. I am at present associated as a vice president with the Charles F. Noyes Company, Inc., of #40 Wall Street, New York City.

My principal duty with the aforementioned company is to evaluate real estate, mainly located in the Borough of Manhattan in the City of New York. I am presently head of a division of the appraisal department of the Charles F. Noyes Company charged with the responsibility of appraising real estate involved in litigation and thus requiring expert testimony relating to their valuation.

In this capacity I have appraised in excess of $1,000,000,000 worth of property in the Borough of Manhattan. I have appraised for banks, insurance companies, railroads, department stores, industrial concerns, investors, trustees, executors, the City of New York, the State of New York, the United States Army, the United States Navy and the United States Department of Justice.

I have appraised real estate of many and diversified classifications. To mention those coming readily to mind: hotels, apartment houses, office buildings, loft buildings, theatres, cinemas, opera houses, bank buildings, factories, garages, gasoline stations, restaurant buildings, night clubs, coal yards, oil refineries, bottling plants, country clubs, town clubs, surf clubs and unimproved land. [218]

Since this affidavit of appraisal pertains to hotel property, it seems germaine to mention some of the hotels I have appraised in the past several years. They are: the McAlpin, Vanderbilt, Marguery, Barbizon Plaza, Wyndham, Hampshire House, Ritz Towers, Delmonico, Madison, Sherry Netherlands, Windemere, Marcy, Oliver Cromwell, Bancroft, Beacon, Stuyvesant, Warwick, Gotham, Wellington, Beverly Shelton, Belmont Plaza and several others.

The company with which I am associated as a vice president is the largest real estate brokerage firm in the City of New York. They manage, lease, sell and mortgage more real estate in dollar volume than any other real estate concern in the Metropolitan area.

I have at the request of Leve, Hecht, Hadfield & McAlpin made an appraisal of the Hotel Pierre, New York, N. Y.

This property located on the southeast corner of Fifth Avenue and East 61st Street has a plot area of approximately 27,000 square feet. Its dimensions are 100.5 on Fifth Avenue and 270 on East 61st Street. The building consists of a 41-

story, luxury type, fireproof hotel having a cubical content of approximately 6,500,000 cubic feet. The building was constructed in 1929-1930. It was planned by the architectural firm of Schultze & Weaver and built by George A. Fuller Company.

The building was originally built on leasehold ground, the land underlying the structure being owned at that time by the Gerry Estates, Inc. Under the original terms of this lease, the net ground rent over the first 21-year period of the lease averaged $355,000 and provided for two renewal options @ 5½% of the then appraised value of the land.

The owner of the leasehold and the promoter of the building venture was the Hotel Pierre, Inc., of which Charles Pierre, the famed restauranteur, was president. Among the prominent persons associated with the venture were: Walter P. Chrysler, Peter Freylinghusen, E. F. Hutton, Otto H. Kahn, Charles H. Sabin and Joseph P. Day.

The venture was partially financed through a first mortgage leasehold loan from S. W. Straus & Co. in the sum of $6,500,000. It was appraised in 1929 by Pease & Elliman, Inc., for $11,000,000 and by Cushman and Wakefield, Inc., for $11,060,000. Both of these firms enjoy an excellent reputation and carry on a large and important real estate business in New York City.

Due primarily to the depression, over financing, a burdensome lease and terrific competition engendered by an over-production of hotels in that era, this hotel was not a success until its ownership passed into stronger financial hands which was

almost coincidental with the end of the great depression and just prior to the war in Europe which later developed into World War II. [219]

In October, 1938, the Getty Realty Corporation purchased the land underlying this hotel subject to the lease thereon for the sum of $2,500,000. In December, 1939, the Getty Square Corp. became the owner of the building through legal proceedings resulting from a default on the part of the ownership of the building in relation to the rental required under the lease.

The Hotel Pierre enjoys a distinctive place among the better class hotels in New York City. Its suite and restaurant facilities offer a gracious type of living much sought after by many people of more than average means. In addition to which it is currently enjoying remarkable success as a transient hostelry and its rates and occupancy are on a level with the best in the City. During the year ending December, 1946, the profit of the Rooms Department was close to $1,000,000.

Its Food and Beverage Department is currently enjoying and for the past several years has enjoyed very marked success. This income media has been enhanced by the popularity of the famous Cotillion Room, Pierre Cafe and its newer and exceptionally smart Grill Room specializing in East Indian dishes. In 1946 the profit of the Food and Beverage Department was over $500,000.

It also enjoys a good income from commercial rentals and concessions. Last year this miscellaneous income amounted to almost $75,000.

The location of the property is ideal for the use to which it is being put. It enjoys a distinguished address, it is only a step from Central Park and is at the northerly end of the most fashionable and well known retail section in the entire world. Night clubs, theatres and all forms of amusement are within a short distance.

Before reaching my conclusion as to the value of the subject property, I gave consideration to all pertinent factors.

Among the elements given careful study by me in appraising this property were the following: its favorable location, the transportation facilities offered both locally and in relation to its out-of-town clientele, its excellent reputation and valuable good will, the value of the and underying the hotel as indicated by many sales of comparable and neighborhood properties, the excellence of its management, its superb condition, the popularity and profitable nature of its dining facilities, the desirability, income potentialities and actual earning power of its rooms and suites and the substantiality of the other miscellaneous income developed through its operation. I have also considered recent leases made in the vicinity of this property as well as data relating to mortgage financing and rates in comparable and competitive hotels. Thought also was given to the probable cost of replacing this structure in today's highly inflated building market. [220]

Primary weight in the formulation of my opinion of value was given to the recent earnings of the

property. I list below the net earnings of the property before interest, depreciation and income taxes for the past several years.

Calendar Year	Net Profit
1947	$479,676.88 (8 months)
1946	$663,556.41
1945	$483,535.07
1944	$508,356.33

It should be noted that the 1947 figures only reflect earnings for ⅔ of the calendar year. Assuming equal pro rata earnings for the balance of the year would indicate a net profit for 1947 of over $720,000. Averaging this estimated figure with the earnings of the three prior years indicates an average net earning power as if free and clear of close to $600,000.

After carefully weighing all the factors enumerated above together with others of less consequence, I determined the value of this property to be as follows:

Land	$1,000,000
Building	$4,500,000
Personality	$1,000,000
Total	$6,500,000

The following "breakdown" and comparison is made in extension of this appraisal.

(a) I have valued the land at $1,000,000 which represents a value of slightly over $37 per square foot. This compares with the City assessed valuation on the land of $1,470,000 indicating a unit value per square foot of almost $54. Appellate Division

of the Supreme Court of the State of New York recently reviewed the value of this property in a certiorari proceeding and found the value of the land to be the sum of $1,135,000 or at the rate of $42 per square foot.

(b) The value I have placed on this building is the sum of $4,500,000 which represents a value of 69c per cubic foot based on the building having a cubical content of 6,500,000 cubic feet. To reproduce this building new today would cost at least $1.25 per cubic foot. The building is now 17 years old, in excellent condition and exceptionally well maintained. A very considerable sum of money has been spent in betterments, improvements and alterations. Even if we allow, however, the usual 2% annual depreciation, the accumulated deterioration would only amount to 34%. Thus [221] the lowest replacement cost envisioned would be at the rate of 82½c per cubic foot.

(c) The value I have placed on the Personalty contained within this property is $1,000,000. This includes the value of the furniture in the rooms and suites, the linens, blankets, draperies and accessories. It also includes the furniture, silver, linen and equipment of the dining rooms and public spaces including the lobby. It also includes the office furniture and stationery of the hotel as well as the hotel's stock of wines and liquors, food, etc., both on the premises and in storage. Guidance in this respect was taken from the Harris, Kerr, Forster reports. Their report as of August 31st, 1947, indicates on their balance sheet (Exhibit A) the follow-

ing inventory assets: Food—$15,127.42; Beverages —$168,406.90; Furniture & Equipment (depreciated)—$575,260.30; Cafe Pierre (depreciated)—$13,111.51, and Cotillion Room (depreciated)—$42,-364.57; Total—$804,270.70. It must be borne in mind that the above items with the exception of Foods & Beverages which are carried at cost price (Considerably below retail value) have been subjected to rapid "book depreciation" consistent with good accounting procedure and to furnish the owners with an allowable deduction against income taxes. This book value, however, does not intend to convey the thought that the furniture and fixture of this hotel could be bought for their so-called depreciated value. The reverse is true. The cost of replacing those items today would easily exceed the $1,000,000 figure which I have allowed in this appraisal. I am not only familiar with the subject of furniture valuation as it relates to hotel property through my valuation work but I also frequently consult with experts specializing in this field. In support of my value of the personal property in this hotel, I wish to point out that the "contents" of this hotel are insured for $1,000,000.

(d) The valuation I have placed on the total asset incorporated in the Hotel Pierre is $6.500,000. Based on a projection of the 8-month statement of earnings for 1947 (Harris, Kerr, Forster Report) to cover the entire year, the estimated earnings of $720,000 would indicate a monetary return or profit on my value (on a free and clear basis) of 11%.

Based on the earnings for the calendar year 1946 ($663,556) the return would be 10% and finally based on the average earnings for the calendar years 1947 (as projected) 1946, 1945 and 1944 ($600,000) the profit would be 9¼%.

GEORGE A. HAMMER.

Sworn to before me this 17th day of November, 1947.

[Seal] JOSEPH K. MARONE,

Notary Public, Co. of New York, Residing in County of New York. N. Y. Co. Clk's No. 2091.

Commission Expires March 30, 1949.

Service by copy admitted November 20, 1947.

/s/ WM. WOODBURN,
One of Attorneys for
Plaintiff.

[Endorsed]: Filed Nov. 20, 1947. [222]

[Title of District Court and Cause.]

AFFIDAVIT OF EMIL KLUTH ON BEHALF OF DEFENDANT

State of California,
County of Los Angeles—ss.

Emil Kluth, being duly sworn, deposes and says:

I am a petroleum geologist associated with Pacific Western Oil Corporation as a Vice President. I have been a member of the American Association of Petroleum Geologists since 1928. During the past year from 1945 to 1946 I was Chairman of the Con-

servation Committee of California Oil Producers. I have been engaged as an actively practicing petroleum geologist since 1911. My work as a practicing geologist has been in connection with oil companies in the Mid-Continent Area, the Rocky Mountain Area, and California.

I entered the service of the Getty corporations as a geologist in October of 1916, in Oklahoma. I was transferred to [223] California in January of 1923. I have been a Vice President of Pacific Western Oil Corporation since 1932. I have been a Vice President and Director of Mission Corporation since May of 1937 and a Director of Skelly Oil Company since July of 1937.

In March, 1947, I was advised that the Getty interests were contemplating a sale of their Pacific Western Oil Corporation stock holdings to Tide Water Associated Oil Company at $68.00 per share, and conferred with Tide Water officials, furnishing them with such information as they desired in connection with the proposed sale.

In April, 1947, I also learned that Sunray Oil Corporation might also be interested in acquiring the Getty interests in Pacific Western Oil Corporation stock.

In July, 1947, I learned that the Tide Water proposed sale was off as the Anti-Trust Division would not give a clearance and that more active negotiations were under way for Sunray Oil Corporation to acquire the stock of the Getty interests.

From July, 1947, to the beginning of October, 1947, the question of a merger of Pacific Western Oil Corporation, Mission Corporation and Skelly Oil

Company with Sunray Oil Corporation was under constant discussion among Messrs. Staples, Williams and myself, and occasionally with Mr. Dockweiler. On October 6, 1947, Mr. Staples advised me that Paul Getty and the Getty Trust had entered into a contract with Sunray Oil Corporation for the sale of Pacific Western stock, conditioned upon a satisfactory merger being worked out by the respective managements.

On October 8, 1947, Mr. Dockweiler advised me that the consideration of the merger was to come before the Mission Corporation Board of Directors at a meeting on October 18, 1947, unless an earlier meeting were called for such purpose.

On October 14, 1947, Mr. Staples advised me that in all probability Sunray Oil Corporation was going to make a proposal [224] to the Mission Directors for a merger on the basis of six (6) shares for one (1), and that Skelly Oil Company had been dropped out of the proposed merger. I immediately started gathering such information as I could concerning the various companies and making an analysis of all of the corporations. At that time I received the 1946 Annual Report of Sunray Oil Corporation from Mr. Staples. I proceeded to Tulsa, Oklahoma, and arrived there on October 16, 1947. I visited the offices of Sunray Oil Corporation and there gathered such information as I could concerning Sunray Oil Corporation. Mr. Staples, Mr. Williams and myself commenced an investigation of all the facts and data each of us were able to obtain and continued to make an intensive analysis of the various

factors we considered important in order to pass upon the proposal which was to come before us at the meeting of October 18, 1947.

In making my analysis as to whether the proposal would be fair to the Mission stockholders and desirable from their viewpoint, I considered many factors, including among them the following: The assets, properties, production, earnings, stock market prices, dividends, reserve estimates, and other pertinent data as to Pacific Western Oil Corporation, Mission Corporation, Skelly Oil Company and Sunray Oil Corporation. I also considered stock market prices of Tide Water Associated Oil Company. After a full and complete analysis by myself and a discussion with Messrs. Williams, Staples and Boal, and a review of the conclusions of those gentlemen and more particularly the computations and data which had been gathered by Mr. Williams, I concluded that the merger terms to be proposed were fair and equitable to the Mission stockholders and that the merger upon such terms would be desirable from the viewpoint of the Mission stockholders, and that such merger should be submitted to such stockholders for their consideration.

A summary of some of the facts which I considered and the tabulations I was able to prepare from such facts based on varying [225] theories, all of which supported my conclusions, follows:

1. Comparative Table of Stock Values:

October 18, 1947 (Week ending close), PW, 57; Mission, 54¼; Sunray, 11⅜ Skelly, 93½; Skelly, 93½; TW, 24⅞.

	Average Between High and Low by Quarters							
	Oct.-Nov.-Dec. 1945	Jan.-Mar. 1946	April-June 1946	July-Sept. 1946	Oct.-Dec. 1946	Jan.-Mar. 1947	April-June 1947	July Sept. 1947
Sunray	7½	8½	11½	10½	8¼	9	8½	11¼
PW	28	22½	32	25	21	25	32½	41½
Mission	31½	33	40	35½	32	31½	34	40½
Skelly	56½	63	78	69½	65	68½	69½	79½
Tide Water	21½	20½	23	21	19	19	19½	21

9 Mo. Average 1947—Sunray 9½; PW 32; MCO 35; Skelly 72½; TW 20

Ratio Sunray to Mission—1 to 3.2 (on stock market quotation) (9 month stock values).

2. Comparative Table of Dividends:

	Pacific Western	Mission	Skelly	Sunray	Tide Water
1946	.50	1.45	2.00	.30	1.00
1947	None	1.50	2.50	.50	1.05

1947 Dividend Ratio—Sunray to Mission—1 to 3

3. Comparative Table of Earnings:

Pacific Western merged with George F. Getty, Inc. in 1946. Sunray Oil Corporation merged with Transwestern in 1946.

Pacific Western—First 9 months of 1947		
Operating profit	1,031,559	
Other profit	77,046	
Subsidiaries	405,267	
Dividend*	1,177,094	
*641,808 MCO × ¾ of $1.50		
577,854TW × ¾ of $1.05	2,690,966	
Taxes	50,000	
Net	2,640,966	= 1.93 for 9 months
	1,371,730	
Mission Corporation—First 9 months of 1947		
(A) Including Skelly dividends only		
Operating profit	109,511	
Expenses	64,249	
	45,262	
Interest earned	2,313	
	47,575	
Dividend*	2,152,135	
*1,345,593 TW × ¾ of $1.05		
582,657 Skelly × ¾ of $2.50	2,199,710	
Taxes	106,000	
Net	2,093,710	= 1.52 for 9 months
	1,379,545	

(B) Earnings of MCO based on 60% of earnings of Skelly and dividend on TW plus other earning and expenses

First 9 months of 1947

a) From operation of Habiger	45,262
Interest	2,313
b) From Dividend of TW 1,345,593 shares at 9/12 of $1.05	1,059,654
c) Earnings of Skelly 582,657 shares at $8.20*	4,777,787
	5,885,016
Taxes	106,000
	5,779,016
1,379,545 shares	4.25

*Skelly 9 months earnings..... $13.70
60% interest of MCO..... 8.20

Skelly Oil Company—First 9 months of 1947
Net income 9 months 1947....13,448,167=13.70 for 9 months

981,348

Sunray Oil Corporation—First 8 months of 1947
Net income 8 months 1947..... 7,002,525=1.42 for 8 months

4,933,812
1.42 plus 1/8=1.60 for 9 months

Earning Ratio for first 9 months of 1947:

PW, 1.93 MCO, 1.52* Skelly, 13.70 Sunray, 1.60

Ratio—Sunray to Mission—1 to 1 on earnings.

*Ratio—Sunray to Mission—1 to 2.7 (by including Skelly proportionate earnings in place of dividend)

*MCO $4.25 based on including Skelly earnings in place of Skelly dividend.

4. Comparative Evaluation of Underlying Assets:

In making this evaluation I included the oil properties upon the basis of the practical rule-of-thumb used widely and generally accepted in the oil business of $3000 for each barrel of daily net production in California, and $2500 for each barrel of daily net settled production in the Mid-Continent and $2000 per barrel of daily relative flush production in the Mid-Continent. This rule-of-thumb is used by practical oil men in determining value of oil producing properties for purposes of buying and selling. In my opinion it is a fair yard-stick for comparing relative values of producing properties:

Pacific Western—Sept. 30, 1947

Total Assets			32,853,149
Liabilities			1,567,947
Net Assets (other than capital stock and surplus)			31,285,202
	Adjustments		
MCO 641,808-9,947,084 (Book) Valued at $40. (3rd Q Aver.)	25,672,320	Apprec.	15,725,236
TW 577,854-3,927,006 (Book) Valued at $21. (3rd Q. Aver.)	12,134,934	Apprec.	8,207,928
Hotel	3,358,615 (Book)	Apprec.	2,641,385
Value—present	6,000,000		
Oil Properties 10,576 net at $3000 per bbl	10,704,945 (Book) 31,728,000	Apprec.	21,023,055
Net Assets (other than capital stock and surplus)			79,882,806
Shares			1,371,730
PW per Share			58.00

As a controlling factor of MCO and Skelly, this stock is worth a good deal more but not to minority stockholders as stocks always sell at less than their proportionate part of net assets.

Mission Corporation—Sept. 30, 1947

Total Assets			20,066,792
Liabilities			151,319
Net Assets (other than capital stock and surplus)			19,915,473
TW 1,345,593-13,938,216 (Book) Valued at $21.00 (3rd Q Aver.) 28,257,453	Apprec.		14,319,237
Skelly 582,657- 4,250,289 (Book) Valued at $80 (3rd Q Aver.) 46,612,246	Apprec.		42,361,957
Oil Properties 117,439 (Book) 221 bbls at $2500 per bbl. 550,250	Apprec.		432,811
Total Assets (other than capital stock and surplus)			77,029,478
Shares			1,379,545
Mission per share			55.50

Fifty-five dollars and 50 cents is a fair value for it holds the controlling interest of Skelly Oil Company, but would not be worth that much to a minority stockholder as stocks always sell at less than their proportionate part of evaluated assets.

Skelly Oil Company—Sept. 30, 1947

Assets			118,527,428
Liabilities (Current)		14,750,407	
(Funded)		15,600,000	30,350,401
Net Assets (other than capital stock and surplus)			88,177,027
Adjustments			
Producing property and Undev. property		54,015,209	(Book)
40,000 bbl at 2500 per bbl	100,000,000		
14,180 bbl at 2000 per bbl	28,360,000		
63,000,000 from undev. reserves at 50c	31,500,000		
Undev. acreage	8,500,000		144,345,791
1500 Billion Cu. ft. dry gas	30,000,000		
	198,360,000		
Crude pipe lines no adjustment			
Refining—Nat. Gas Plant		12,224,848	(Book)
Gas Plant	8,600,000		
Refinery	15,000,000		
Skellgas	8,600,000		19,975,152
	32,200,000		
Marketing no adjustment			
Other Assets no adjustment			
Total Assets (other than capital stock and surplus)			252,497,970
Shares			981,348
Skelly per share			256.00

As Skelly Oil Co. does not control any substantial producing subsidiaries, therefore this value should be considerably discounted to get the fair market value of this stock. Thirty per cent discount equals the market value of $180.00.

Sunray Oil Corporation

Total Assets		96,979,952
Liabilities		35,425,318
Preferred Stock		26,189,360
Net Assets (other than capital stock and surplus)		35,365,274

Adjustments

Producing properties	45,429,292 (Book)	
34,000 at 2500 per bbl	102,000,000	
30,000,000 from undev. at 50c	15,000,000	
600 Billion cu. ft. dry gas	12,000,000	
Undev. acreage	5,700,000	
Lines	90,700	96,752,085
Tools	1,698,539	
Work in progress	2,692,138	
Ref. 6 x profit	20,000,000	
	142,181,377	

Total Assets (other than capital stock and surplus)	132,117,359
Shares	4,923,646
Sunray per share	26.50

The Sunray Oil Corp. does not control any substantial producing subsidiaries therefore this value must be considerably discounted to get the fair market value. Thirty per cent discount equals the market value of $19.00

Ratio of Assets

Pacific Western $58.00; Mission $55.50; Skelly $180.00; Sunray $19.00
Asset Ratio—Sunray to Mission—1 to 3 on evaluated assets.

Resume

Ratio—Sunray to Mission

Stock quotations	1. to 3.2	(1 to 2) including Mission's Equity
Dividends	1 to 3	in Skelly earnings
Earnings	1 to 1	(1 to 5) on Skelly stock at $180
Evaluation	1 to 3	a share.

The comparative evaluations set forth in paragraph 4 are upon the basis of the market values of securities held by Pacific Western Oil Corporation and Mission Corporation. In my opinion this is the only fair basis of evaluation for the ordinary minority stockholders inasmuch as the ordinary stockholder has no way of realizing the value of the assets underlying such securities. I [231] made a further evaluation of Mission Corporation and Pacific Western for informational purposes however, taking the values of the assets underlying the securities and set forth a tabulation upon this basis, taking the evaluations from the above tables of the underlying values:

Sunray at $19.00 (from Sunray evaluation)
Skelly at 180.00 (from Skelly evaluation)
TW at 21.00 (TW 3rd Q. Aver.)
Tabulation on this basis is as follows:

A.	Mission Corporation—Sept. 30, 1947	
	Current assets	1,760,847
	Fixed assets	117,439
	Add Habiger excess value (above book value)	432,811
	Investments:	
	1,345,593 TW at $21	28,257,453
	582,657 Skelly at $180	104,878,260
	Total Assets	135,446,810
	Total Liabilities	151,319
	Net assets (other than capital stock and surplus)	135,295,491
	Shares	1,379,545
	Mission per share	98.00

Ratio—Sunray to Mission—1 to 5

B. Pacific Western—Sept. 30, 1947

Assets	
Current assets	5,046,239
Investments:	
641,808 MCO at $98 (from previous schedule)	62,891,184
577,854 TW at $21 (3rd Q Aver.)	12,134,934
Oil properties	31,728,000
Hotel	6,000,000
Organization costs	114,245
Prepaid Item	415,972
Total Assets	118,330,574
Liabilities	
Current liabilities	1,567,947
Net Assets (other than capital stock and surplus)	116,762,627
Shares	1,371,730
PW per share (on breakdown of MCO $98, Skelly at $180, TW at $21)	85.00

/s/ EMIL KLUTH.

Service admitted by copy November 20, 1947.

/s/ WM. WOODBURN,
One of Attorneys for
Plaintiff.

Subscribed and sworn to before me this 19th day of November, 1947.

[Seal] /s/ DOROTHY HENRY,
Notary Public in and for Said
County and State.

My Commission Expires May 29, 1949.

[Endorsed]: Filed Nov. 20, 1947. [232]

In the United States District Court
for the District of Nevada

No. 669—Civil

WILLIAM G. SKELLY,

Plaintiff,

vs.

MISSION CORPORATION, a Corporation,

Defendant,

SUNRAY OIL CORPORATION, a Corporation,

Applicant for Intervention.

William L. Hanaway, Springmeyer & Thompson, Attorneys for Intervener.

Hawkins, Rhodes & Hawkins, Lester D. Summerfield, Tompkins, Boal & Tompkins, Attorneys for Defendant, Mission Corporation.

AFFIDAVIT OF RAYMOND F. KRAVIS

State of Nevada,
County of Washoe—ss.

Raymond F. Kravis, being duly sworn, deposes and says:

I am a graduate mining engineer specializing in investigation, evaluation and appraisal of oil and gas properties and assets and reserves. I graduated from Lehigh University in 1924 with a degree in mining engineering. From that date to 1935 I was continuously engaged in petroleum evaluation and appraisal for part of the time with W. O. Ligon & Company and for part of the time with Samuel

J. Caudill, both consulting engineers and geologists of Tulsa, Oklahoma. In 1935 I opened my own office as a consultant and have continued actively in the profession to date. [233]

My work has consisted of surveys and appraisals of oil and gas properties for purposes of estimating oil and gas reserves and determining values, for depletion and depreciation; and for purposes of purchase and sale of oil and gas properties and companies, for proposed consolidations and mergers of oil companies, and in liquidation proceedings. I have been retained and have made appraisal reports of oil and gas producing properties for some of the outstanding oil producing and financial institutions in this country including the Thomas B. Slick Estate, Anderson Pritchard Oil Corporation, Standard Oil of Ohio, Warren Petroleum Corporation, Texas Gulf Producing Company, Fohs Oil Company, National Refining Company, Darby Oil and Refining Company, Sunray Oil Corporation, Transwestern Oil Company, Kerr, McGee Oil Industries, Inc., First National Bank of Chicago, Harris Trust and Savings Bank of Chicago, Empire Trust Company of New York, First National Bank and Trust Company of Tulsa, Eastman, Dillon & Company of New York, Merrill Lynch, Fenner & Bean of New York; Bear, Stearns & Company of New York and many others.

I have also testified as an expert for the United States Government in tax proceedings of the Treasury Department in oil company liquidations.

When Darby Petroleum Corporation was purchased by Sunray Oil Corporation I made reports of Sunray and Darby's properties, assets and oil reserves for the Sunray Oil Corporation and at the end of each year I have estimated and appraised the oil reserves of Sunray for purposes of depletion and depreciation computations for required financial reports.

In September of 1947 I was engaged by Sunray Oil Corporation [234] to make a preliminary estimate of the properties, assets and oil reserves of Sunray and to report on the approximate relative values of Sunray, Mission Corporation and Pacific Western Oil Corporations. These reports were made to check other experts engaged, representing primarily bankers and other interests, to assure the directors of Sunray Oil Corporation that a merger would be to the best interests of Sunray stockholders.

As to Sunray Oil Corporation

I calculated and appraised the oil and gas reserves as of September 31, 1947, for this company by the generally accepted and detailed methods of appraisal used by other competent engineers, geologists and petroleum experts doing this work. After giving full consideration to the quality of the oil reserves, the price of various qualities of oil on that date, operations and overhead expenses and future development costs I concluded that the fair and reasonable market value of Sunray's oil on September 31, 1947, to be 70c per barrel for the oil and 2c per M.C.F. (million cubic feet of gas).

I concluded that the aggregate total proved producing and proved undeveloped oil and gas reserves for Sunray Oil Corporation were 177,500,000 barrels of oil and 600,000,000 M.C.F.'s of gas.

At 70c per barrel for oil and 2c per M.C.F. for gas the monetary value of oil and gas reserves as above defined owned by Sunray Oil Corporation on September 31, 1947, were:

Oil Reserves	$124,250,000.00
Gas Reserves	12,000,000.00
Total	$136,250,000.00

In addition other assets of Sunray were found to be, [235] subject to possible minor adjustments, as follows:

Undeveloped leases and realty	$ 5,515,077.00
Other investments	793,771.00
Work in progress	2,919,905.00
Refinery and other equipment	2,500,000.00
Net quick assets	9,319,267.00
Drilling tools, trucks, real estate, etc.	1,000,000.00
Total oil & gas reserves (carried over)	136,250,000.00
Total	$158,298,019.00

Liabilities

Deferred and long term debt	$ 29,119,667.00
Provision for additional federal tax	537,670.00
Preferred stock	26,189,360.00
Total liabilities	$ 55,866,697.00

The net worth of Sunray Oil Corporation is the difference between these two figures or $102,451,-322.00, which divided by the number of shares of stock outstanding represent a worth of $20.88 per share.

As to Pacific Western Oil Corporation

In appraising the value of this company and its properties, assets, oil and gas reserves I made use of all published data and other records necessary to form a judgment of the monetary value of such properties and assets and I found by these methods that as of September 31, 1947, the respective values were: Oil reserve, 42,000,000 barrels at the estimated value of 65c per barrel for the quality of oil in these fields. I calculated the net worth of the company on the following asset values:

Oil reserves at 65c per barrel	$ 27,300,000.00
Gas reserves	200,000.00
Undeveloped lease holds and fee lands	3,400,000.00
Net current assets	3,363,427.00
Pierre Hotel New York	6,000,000.00
Tidewater stock @ $25.00 less tax	11,400,000.00
Mission & Skelly Oil Stock	76,432,915.00
Total net assets of Pacific Western Oil Corporation	$128,096,342.00
Total cost to Sunray	93,300,000.00
Excess value of Pacific Western Oil Corporation over cost to Sunray	$ 34,796,342.00

As to Mission Corporation

Mission Corporation is largely a holding company but I have evaluated its properties as nearly as possible on the same basis used for evaluating the assets of Pacific Western Oil Corporation and Sunray Oil Corporation particularly insofar as Mission ownership in Skelly Oil Corporation is concerned, that is using its intrinsic worth, rather than the

New York Stock Exchange value of the few shares traded in daily because such does not represent or fix the true value of the Skelly properties.

The underlying assets, not including the Skelly stock, as of August 31, 1947, are as follows:

Current assets	$1,790,533.00
Tidewater stock @ $25.00 less tax[1]	28,700,000.00
Oil properties	500,000.00
	30,990,533.00
Liabilities (before adjustment)	188,865.00
Total	$ 30,801,668.00
Value of underlying assets of Skelly Oil Corporation reduced to Mission Corporation's net interest (59.37%)[2]	132,845,796.00
Total Net Worth Mission Oil Corporation.. or $119.09 per share.	$163,647,464.00

[1]Tidewater stock has been evaluated on the basis of the price which Sunray has contracted to sell it.

[2]The underlying asset value of Skelly Oil Corporation is based on its intrinsic value and not on the stock exchange selling price of its stock.

After the purchase of Pacific Western stock by Sunray and including its properties and Sunray's net interest in the underlying assets of Skelly Oil Corporation through ownership of Pacific Western as set forth above, Sunray Oil Corporation common stock would have a present value of $28.00 per share.

On the basis of the respective value of the net worth of Sunray stock after the purchase of Pacific Western common stock, and the value of the net

worth of Mission Corporation their exchange ratio of 4.3 shares of Sunray for one of Mission would be mathematically proper. Sunray has offered six shares of its stock, after the purchase of Pacific Western stock, for each share of Mission Corporation stock at the time of the consummation of the merger and in my opinion this is an imminently fair ratio of exchange.

/s/ RAYMOND F. KRAVIS.

Subscribed and sworn to before me this 20th day of November, 1947.

[Seal] /s/ BRUCE R. THOMPSON,
Notary Public.

Service, by copy hereby is admitted this 21st day of November, 1947.

/s/ JOHN P. THATCHER,
Attorney for Plaintiff.

[Endorsed]: Filed Nov. 21, 1947. [238]

[Title of District Court and Cause.]

AFFIDAVIT OF J. KROUPA

State of Nevada,
County of Washoe—ss.

J. Kroupa, being first duly sworn, deposes and says:

I am Manager of the Stock Records Department of Mission Corporation and have been duly appointed one of the Inspectors of Elections for the meeting of stockholders of Mission Corporation

called to be held on December 6, 1947. I am in charge of receiving and tabulating all proxies to be voted at said meeting.

Up to November 20, 1947, I have received proxies from 5739 stockholders owning a total of 98,397 shares of stock of Mission Corporation. Of these shares received, 5564 stockholders owning 89,698 shares have voted in favor of the proposed merger and 175 stockholders owning 8,699 shares have voted against the merger.

In Witness Whereof, I have hereunto set my signature [239] this 21st day of November, 1947.

/s/ J. KROUPA.

Subscribed and sworn to before me this 21st day of November, 1947.

[Seal] R. Z. HAWKINS,

Notary Public in and for the County and State Aforesaid.

My commission expires November 23, 1949.

Service admitted Nov. 21, 1947.

JOHN P. THATCHER.

[Endorsed]: Filed Nov. 21, 1947.